

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

**THIS CONTRACT**, hereinafter referred to as “CONTRACT” for purposes of identification hereby numbered MA-080-20010599, 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**

GHD Inc., a California Corporation, hereinafter referred to as “A-E”,

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

**RECITALS**

**WHEREAS**, COUNTY requires professional services to accomplish projects and/or services (“PROJECTS/SERVICES”) as described in MA-080-20010599 Scope Of Work for Environmental Services for OC Loop Segments O, P and Q, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference; and

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

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

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

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

**1.1.2.** A-E has offered, and COUNTY has accepted, the professional services of **Bruce Schmith, PE**, and A-E shall assign him/her to the PROJECTS/ SERVICES.

**1.1.3.** A-E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and only the firms or independent consultants/contractors identified in Attachment C may be employed by A-E to provide these PROJECTS/SERVICES.

**1.1.4.** Consultants/contractors may be substituted and/or added by mutual 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 (*subject to change per scope of work specifications and/or contract task orders*)**

- a) Concurrently with the work of the CONTRACT, A-E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from COUNTY, A-E shall submit to COUNTY two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of PROJECTS/SERVICES assignments. A-E schedule shall include required COUNTY review period(s) set forth herein. An approved copy of the progress schedule will be returned to A-E.
- b) A-E shall allow at least five (5) working days for COUNTY review of progress work schedule. In planning work A-E should anticipate and allow ten (10) working days for COUNTY review of each submittal required in Attachment A.
- c) A-E shall meet on an as-needed basis as determined by COUNTY or at least once every four (4) weeks with COUNTY to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d) Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to COUNTY for concurrence.
- e) A-E shall complete all the work of PROJECTS/SERVICES and obtain all approvals by the COUNTY within the time frame indicated in Attachment A except A-E shall not be responsible for any delay beyond the control of A-E.

- f) In the event A-E fails to complete the work and obtain the approval of DIRECTOR in the time allowed, COUNTY shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A-E to complete the PROJECTS/SERVICES pursuant to this CONTRACT shall be extended for delay caused by COUNTY in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY review and/or approval time periods.

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

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

### **1.4. Performance Period (LAPM Artic. IV) and Maximum Compensation**

- 1.4.1. This CONTRACT shall go into effect upon Board approval and A-E shall commence work after notification to proceed by COUNTY'S Contract Administrator. The CONTRACT shall end after the second year, unless extended by contract amendment.
- 1.4.2. A-E is advised that any recommendation for contract award is not binding on COUNTY until the CONTRACT is fully executed and approved by the COUNTY.
- 1.4.3. The maximum allowable compensation for this CONTRACT is **one million, sixty-nine thousand, seven hundred eighty-six dollars and seventy-eight cents (\$1,069,786.78)**.
  - a. The work to be performed under this CONTRACT is described in Attachment A Statement of Work and Attachment B Cost/Compensation. The approved A-E's Cost Proposal, dated November 5, 2019, is attached hereto (Exhibit No. 1) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this CONTRACT, this CONTRACT shall take precedence.

### **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 reimbursable expenses, shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment B", attached hereto and incorporated herein by reference.
- 1.5.3. Where extra work is authorized for PROJECTS/SERVICES:
  - a) The amount for Extra Work shall be determined using Attachment B. Extra Work

shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond \$200,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$200,000, whichever is less.

- b) A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.

**1.5.4.** For partial completion of work of PROJECTS/SERVICES followed by default on part of A-E:

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

**2. LABOR**

**2.1 Non-Employment of COUNTY Personnel**

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

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

**2.2 Non-Discrimination**

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

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

**2.3 Employee Eligibility Verification**

- 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.

The COUNTY reserves the right to request the declarations page showing all endorsements and a certified copy of the policy. In addition, all subcontractors performing work on behalf of A-E pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for A-E.

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

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

1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from A-E's, its agents, employee's or subcontractor's performance of this CONTRACT, A-E shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. A-E's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the A-E's SIR provision shall be interpreted as though the A-E was an insurer and the COUNTY was the insured.

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

A. Qualified Insurer

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 coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims made 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, and its respective elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN AGREEMENT.***
  - b. A primary non-contributing endorsement using ISO form CG 20 01 0413, or a form at least as broad evidencing that A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against ***the County of Orange, and its respective elected and appointed officials, officers, employees and agents***, or provide blanket coverage, which will state ***AS REQUIRED BY***

**WRITTEN AGREEMENT.**

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, and its respective 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 and its respective 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 Intentionally Omitted****6.10 Ownership of Documents**

**6.10.1** 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.

**6.10.2** 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.

**6.11 Confidentiality**

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

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

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

**6.12 Publication**

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

**6.12.2** The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this CONTRACT or any subsequent amendment of, or effort under this CONTRACT. A-E must first obtain review and approval of said media contact from the COUNTY through the COUNTY'S Project Manager. Any requests for

interviews or information received by the media should be referred directly to the COUNTY. A-E's are not authorized to serve as a media spokespersons for COUNTY projects without first obtaining permission from the COUNTY Project Manager.

### **6.13 Records and Audit/Inspections**

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

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

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

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

### **6.14 Notices**

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

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

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

For A-E:

GHD Inc.  
320 Goddard Way, Suite 200  
Irvine, CA 92618  
Attn: Bruce Schmith  
Phone: 949-585-5274  
E-mail: [Bruce.Schmith@GHD.com](mailto:Bruce.Schmith@GHD.com)

For COUNTY:

OC Public Works/ OC Infrastructure Programs



601 N. Ross St, 3rd Floor  
Santa Ana, CA 92701  
Attn: Tim Nguyen  
Phone: 714-245-4517  
E-mail: Tim.Nguyen@ocpw.ocgov.com

cc: OC Public Works Procurement Services  
601 N. Ross St., 4th Floor  
Santa Ana, CA 92701  
Attn: Christina Rojas  
Phone: 714-667-9765  
E-mail: [Christina.Rojas@OCPW.OCGOV.com](mailto:Christina.Rojas@OCPW.OCGOV.com)

## **6.15 Attorney's Fees**

**6.15.1** 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.

## **6.16 Interpretation**

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

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

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

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

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

## **6.17 Headings**

**6.17.1** 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.

## **6.18 Acceptance**

**6.18.1** 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.

**6.19 Changes**

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

**6.20 Assignment**

- 6.20.1** 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.

**6.21 Changes in Ownership**

- 6.21.1** 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.

**6.22 Force Majeure**

- 6.22.1** 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.

**6.23 Calendar Days**

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

**6.24 Title to Data**

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

**6.25 Availability of Funds**

- 6.25.1** 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.

**6.26 Contingency of Funding**

- 6.26.1** 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.

**6.27 Contract Construction**

- 6.27.1** 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.

**6.28 Conflicts of Interest**

- 6.28.1** A-E or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may be materially affected by services provided under this CONTRACT, (2) prohibits such persons from making, or participating in making, decisions that could reasonably affect such interest; and (3) may require the filing a Statement of Economic Interest (Form 700).
- 6.28.2** If subject to the Act, A-E shall conform to all requirements of the Act. Failure to do so shall constitute a material breach and is grounds for immediate termination of this CONTRACT by COUNTY. Pursuant to Section 4.3 "Indemnification", A-E shall indemnify and hold harmless COUNTY for any and all claims for damages resulting from Contractor's violation of this Section.

**6.29 Usage**

- 6.29.1** 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 of Orange, at prices listed in the CONTRACT, regardless of quantity requested.

**6.30 Wage Rates**

- 6.30.1** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute

this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

### **6.31 Apprenticeship Requirements**

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

### **6.32 Registration of Contractor**

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

### **6.33 Payroll Records**

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

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

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

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

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

**6.33.6** The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

**6.33.7** The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.

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

#### **6.34 Work Hour Penalty**

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

#### **6.35 Apprentices**

- 6.35.1** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.
- 6.35.2** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any

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

**6.35.3** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

**6.35.4** The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

## **REQUIRED FEDERAL PROVISIONS**

The following are required federal clauses. In the event of a potential ambiguity between the federal clauses and the remainder of the CONTRACT, COUNTY will be solely responsible for interpreting how to implement the CONTRACT.

### **7.1 Allowable Costs and Payment**

- A. A-E will be reimbursed for hours worked at the hourly rates specified in the A-E's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this CONTRACT. A-E will be reimbursed within thirty (30) days upon receipt by COUNTY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, A-E will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal.
- C. A-E shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. A-E is responsible for paying the appropriate rate, including escalations that take place during the term of the CONTRACT.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. A-E will be responsible for transportation and subsistence costs in excess of State rates.
- E. When milestone cost estimates are included in the approved Cost Proposal, A-E shall obtain prior written approval in the form of a CONTRACT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- F. Progress payments will be made monthly in arrears based on services provided and actual costs incurred.
- G. A-E shall not commence performance of work or services until this CONTRACT has been approved by COUNTY and notification to proceed has been issued by



COUNTY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this CONTRACT.

- H. A-E will be reimbursed within thirty (30) days upon receipt by COUNTY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which A-E is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this CONTRACT number and project title. Credits due COUNTY that include any equipment purchased under the provisions of Section 7.7 Equipment Purchase, must be reimbursed by A-E prior to the expiration or termination of this CONTRACT. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

County of Orange/OC Public Works  
Tim Nguyen  
601 N. Ross St., 3rd Floor  
Santa Ana, CA 92701

- I. The period of performance for work performed shall be in accordance with dates specified in the CONTRACT. No work will extend beyond the expiration date of this CONTRACT.
- J. The total amount payable by COUNTY shall not exceed the amount agreed to, unless authorized by amendment.
- K. If A-E fails to satisfactorily complete a deliverable according to the schedule set forth in CONTRACT, no payment will be made until the deliverable has been satisfactorily completed.
- L. The total amount payable by COUNTY for all Task Orders resulting from this CONTRACT shall not exceed \$1,069,786.78. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this CONTRACT.

## **7.2 Termination**

- A. This CONTRACT may be terminated by COUNTY, provided that COUNTY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 6.10 Ownership of Documents and Section 7.2 Ownership of Data.
- B. COUNTY may temporarily suspend this CONTRACT, at no additional cost to COUNTY, provided that A-E is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If COUNTY gives such notice of temporary suspension, A-E shall immediately suspend its activities under this CONTRACT. A temporary suspension may be issued concurrent with the notice of

termination provided for in subsection A of this Section.

- C. Notwithstanding any provisions of this CONTRACT, A-E shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this CONTRACT by A-E, and COUNTY may withhold any payments due to A-E until such time as the exact amount of damages, if any, due COUNTY from A-E is determined.
- D. In the event of termination, A-E shall be compensated as provided for in this CONTRACT. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 6.10 Ownership of Documents and Section 7.2 Ownership of Data.

### **7.3 Cost Principles and Administrative Requirements**

- A. The A-E agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The A-E also agrees to comply with federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the A-E that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the A-E to COUNTY.
- D. When an A-E or Subcontractor is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

### **7.4 Retention of Records/Audit**

For the purpose of determining compliance with Gov. Code § 8546.7, the A-E, Subcontractors, and COUNTY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. All parties, including the A-E's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the CONTRACT period and for three (3) years from the date of final payment under the CONTRACT. COUNTY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under federal laws or regulations (including the basis of federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subcontractors, and the A-E's Independent CPA, that are pertinent to the CONTRACT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

## 7.5 Audit Review Procedures

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by COUNTY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, A-E may request a review by COUNTY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY'S will excuse A-E from full and timely performance, in accordance with the terms of this contract.
- D. A-E and subcontractor contracts, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, a CONTRACT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the CONTRACT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is A-E's responsibility to ensure federal, COUNTY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The CONTRACT, cost proposal, and ICR shall be adjusted by A-E and approved by COUNTY Contract Administrator to conform to the audit or review recommendations. A-E agrees that individual terms of costs identified in the audit report shall be incorporated into the CONTRACT by this reference if directed by COUNTY at its sole discretion. Refusal by A-E to incorporate audit or review recommendations, or to ensure that the federal, COUNTY or local governments have access to CPA work papers, will be considered a breach of CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.
- E. A-E's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the A-E and approved by the COUNTY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the A-E to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.
  - 1. During Caltrans A&I's review of the ICR audit work papers created by the A-E's independent CPA, Caltrans A&I will work with the CPA and/or A-E toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse the A-E at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit

Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require A-E to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the A-E's and/or the independent CPA's revisions.
  3. If the A-E fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this CONTRACT.
  4. A-E may submit to COUNTY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this CONTRACT has been completed to the satisfaction of COUNTY; and, (3) Caltrans A&I has issued its final ICR review letter. The A-E MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this CONTRACT and all other agreements executed between COUNTY and the A-E, either as a prime or subcontractor, with the same fiscal period ICR.

## **7.6 Subcontracting**

- A. Nothing contained in this CONTRACT or otherwise, shall create any contractual relation between the COUNTY and any Subcontractors, and no subagreement shall relieve the A-E of its responsibilities and obligations hereunder. The A-E agrees to be as fully responsible to the COUNTY for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the A-E. The A-E's obligation to pay its Subcontractors is an independent obligation from the COUNTY's obligation to make payments to the A-E.
- B. The A-E shall perform the work contemplated with resources available within its

own organization and no portion of the work shall be subcontracted without written authorization by the COUNTY Contract Administrator, except that which is expressly identified in the A-E's approved Cost Proposal.

- C. Any subagreement entered into as a result of this CONTRACT, shall contain all the provisions stipulated in this entire CONTRACT to be applicable to Subcontractors unless otherwise noted.
- D. A-E shall pay its Subcontractors within Fifteen (15) calendar days from receipt of each payment made to the A-E by the COUNTY.
- E. Any substitution of Subcontractors must be approved in writing by the COUNTY Contract Administrator in advance of assigning work to a substitute Subcontractor.

#### **7.7 Equipment Purchase and Other Capital Expenditures**

- A. Prior authorization in writing by COUNTY's Contract Administrator shall be required before A-E enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or A-E services. A-E shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in A-E's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by COUNTY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this CONTRACT is subject to the following:
  - 1. A-E shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the CONTRACT, or if the CONTRACT is terminated, A-E may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If A-E elects to keep the equipment, fair market value shall be determined at A-E's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and A-E, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.
  - 2. Regulation 2 CFR Part 200 requires a credit to federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.



## 7.8 State Prevailing Wage Rates

- A. No A-E or Subcontractor may be awarded a CONTRACT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this CONTRACT, including any subsequent amendments.
- B. The A-E shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this CONTRACT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer ([http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region\\_Map\\_Construction\\_7-8-15.pdf](http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf)). These wage rates are made a specific part of this CONTRACT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
  1. Each A-E and Subcontractor shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the A-E or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the A-E under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by COUNTY representative's at all reasonable hours at the principal office of the A-E. The A-E shall provide copies of certified payrolls or permit inspection of its records as follows:



- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the A-E.
  - c. The public shall not be given access to certified payroll records by the A-E. The A-E is required to forward any requests for certified payrolls to the COUNTY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each A-E shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the A-E or Subcontractor performing the work shall not be marked or obliterated.
  5. The A-E shall inform COUNTY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The A-E or Subcontractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the A-E or Subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to COUNTY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. A-E is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.
- E. When prevailing wage rates apply, the A-E is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the COUNTY Contract Administrator.
  - F. Penalty
    1. The A-E and any of its Subcontractors shall comply with Labor Code §1774

and §1775. Pursuant to Labor Code §1775, the A-E and any Subcontractor shall forfeit to the COUNTY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the CONTRACT by the A-E or by its Subcontractor in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the A-E or Subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the A-E or Subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the A-E or Subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the A-E or Subcontractor had knowledge of the obligations under the Labor Code. The A-E is responsible for paying the appropriate rate, including any escalations that take place during the term of the CONTRACT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the A-E or Subcontractor.
4. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by the Subcontractor, the prime A-E of the project is not liable for the penalties described above unless the prime A-E had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime A-E fails to comply with all of the following requirements:
  - a. The CONTRACT executed between the A-E and the Subcontractor for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The A-E shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees by periodic review of the certified payroll records of the Subcontractor.
  - c. Upon becoming aware of the Subcontractor's failure to pay the specified prevailing rate of wages to the Subcontractor's workers, the A-E shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.
  - d. Prior to making final payment to the Subcontractor for work performed on the public works project, the A-E shall obtain an affidavit signed under

penalty of perjury from the Subcontractor that the Subcontractor had paid the specified general prevailing rate of per diem wages to the Subcontractor's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, COUNTY shall notify the A-E on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subcontractor has failed to pay workers the general prevailing rate of per diem wages.
6. If COUNTY determines that employees of a Subcontractor were not paid the general prevailing rate of per diem wages and if COUNTY did not retain sufficient money under the CONTRACT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the A-E shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by COUNTY.

#### G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The A-E shall forfeit, as a penalty to the COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the CONTRACT by the A-E or any of its Subcontractors for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

#### H. Employment of Apprentices

1. Where either the prime CONTRACT or the subagreement exceeds thirty thousand dollars (\$30,000), the A-E and any subcontractors under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. A-Es and subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, A-E and subcontractors are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the CONTRACT work. The A-E is responsible for all subcontractors' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

**7.9 Conflict of Interest**

- A. During the term of this CONTRACT, the A-E shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this CONTRACT or any ensuing COUNTY construction project. The A-E shall also list current clients who may have a financial interest in the outcome of this CONTRACT or any ensuing COUNTY construction project which will follow.
- B. A-E certifies that it has disclosed to COUNTY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this CONTRACT. A-E agrees to advise COUNTY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this CONTRACT. A-E further agrees to complete any statements of economic interest if required by either COUNTY ordinance or State law.
- C. The A-E hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this CONTRACT.
- D. The A-E hereby certifies that the A-E or subcontractor and any firm affiliated with the A-E or subcontractor that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this CONTRACT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

**7.10 Rebates, Kickbacks or Other Unlawful Consideration**

The A-E warrants that this CONTRACT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right, in its discretion, to terminate this CONTRACT without liability, to pay only for the value of the work actually performed, or to deduct from this CONTRACT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**7.11 Prohibition of Expending Local Agency State or Federal Funds for Lobbying**

- A. A-E certifies to the best of his or her knowledge and belief that:
  - 1. No state, federal, or COUNTY appropriated funds have been paid or will be paid, by or on behalf of the A-E, to any person for influencing or attempting to influence an officer or employee of any local, state, or federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this CONTRACT, or with the extension, continuation, renewal, amendment, or modification of this CONTRACT.
  - 2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

Congress, or an employee of a member of Congress in connection with this CONTRACT, the A-E shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The A-E also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

#### **7.12 Non-Discrimination Clause and Statement of Compliance**

- A. The A-E's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the A-E has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this CONTRACT, A-E and its subcontractors shall not deny the CONTRACT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. A-E and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. A-E and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by COUNTY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this CONTRACT by reference and made a part hereof as if set forth in full.
- D. A-E shall permit access by representatives of the Department of Fair Employment and Housing and the COUNTY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or COUNTY shall require to ascertain compliance with this clause.

- E. A-E and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. A-E shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this CONTRACT.
- G. The A-E, with regard to the work performed under this CONTRACT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The A-E shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the A-E shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subcontractors.

### **7.13 Debarment and Suspension Certification**

- A. The A-E's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the A-E or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and
  - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to COUNTY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

### **7.14 Disadvantaged Business Enterprises (DBE) Participation**



- A. This CONTRACT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". A-Es who enter into a federally-funded agreement will assist the COUNTY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this CONTRACT is **17%**. Participation by DBE A-E or subcontractors shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the CONTRACT. If a DBE subcontractor is unable to perform, A-E must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- C. A-E can meet the DBE participation goal by either documenting commitments to DBEs to meet the CONTRACT goal, or by documenting adequate good faith efforts to meet the CONTRACT goal. An adequate good faith effort means that the A-E must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If A-E has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The COUNTY, A-E or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. The A-E shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT or such other remedy as the COUNTY deems appropriate, which may include, but is not limited to:
1. Withholding monthly progress payments;
  2. Assessing sanctions;
  3. Liquidated damages; and/or
  4. Disqualifying the contractor from future bidding as non-responsible.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting COUNTY consent for the termination, A-E must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subcontractor is unable to perform, A-E must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the COUNTY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the CONTRACT goal if it performs a commercially useful function (CUF) on the CONTRACT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF)

when it is responsible for execution of the work of the CONTRACT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the CONTRACT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the CONTRACT is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its CONTRACT with its own work force, or the DBE subcontracts a greater portion of the work of the CONTRACT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. A-E shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime A-E's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the CONTRACT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subcontractors](#), certified correct by A-E or A-E's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to A-E when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Administrator.
- L. If a DBE subcontractor is decertified during the life of the CONTRACT, the decertified subcontractor shall notify A-E in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the CONTRACT, the subcontractor shall notify A-E in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) calendar days.
- M. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this Section.

#### **7.15 Funding Requirements**

- A. It is mutually understood between the parties that this CONTRACT may have been written

before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the CONTRACT were executed after that determination was made.

- B. This CONTRACT is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose of this CONTRACT. In addition, this CONTRACT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or COUNTY governing board that may affect the provisions, terms, or funding of this CONTRACT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this CONTRACT may be amended to reflect any reduction in funds.
- D. COUNTY has the option to terminate the CONTRACT pursuant to Section 5 and Section 7.2 Termination, or by mutual agreement to amend the CONTRACT to reflect any reduction of funds.

#### **7.16 Change in Terms**

- A. This CONTRACT may be amended or modified only by mutual written agreement of the parties.
- B. A-E shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COUNTY's Contract Administrator.
- C. There shall be no change in A-E's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this CONTRACT without prior written approval by COUNTY's Contract Administrator.

#### **7.17 Contingent Fee**

A-E warrants, by execution of this CONTRACT that no person or selling agency has been employed, or retained, to solicit or secure this CONTRACT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by A-E for the purpose of securing business. For breach or violation of this warranty, COUNTY has the right to annul this CONTRACT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the CONTRACT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **7.18 Disputes**

Prior to either party commencing any legal action under this CONTRACT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this CONTRACT that is not disposed of by agreement shall be decided by a committee consisting of COUNTY's Contract Administrator and OC Public Works Director or his designee, who may consider written or verbal information submitted by A-E.

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, A-E may request review by COUNTY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse A-E from full and timely performance in accordance with the terms of this CONTRACT.

#### **7.19 Inspection of Work**

A-E and any subcontractor shall permit COUNTY, the State, and the FHWA if federal participating funds are used in this CONTRACT; to review and inspect the project activities and files at all reasonable times during the performance period of this CONTRACT.

#### **7.20 Safety**

- A. A-E shall comply with OSHA regulations applicable to A-E regarding necessary safety equipment or procedures. A-E shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. A-E personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. A-E shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. A-E shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

#### **7.21 Ownership of Data**

- A. It is mutually agreed that all materials prepared by A-E under this CONTRACT shall become the property of COUNTY, and A-E shall have no property right therein whatsoever. Immediately upon termination, COUNTY shall be entitled to, and A-E shall deliver to COUNTY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by A-E in performing this CONTRACT which is not A-E's privileged information, as defined by law, or A-E's personnel information, along with all other property belonging exclusively to COUNTY which is in A-E's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this CONTRACT must be approved in writing by COUNTY.
- B. Additionally, it is agreed that the Parties intend this to be a CONTRACT for services and each considers the products and results of the services to be rendered by A-E hereunder to be work made for hire. A-E acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of COUNTY without restriction or limitation upon its use or dissemination by COUNTY.
- C. Nothing herein shall constitute or be construed to be any representation by A-E that the work product is suitable in any way for any other project except the one detailed in this

CONTRACT. Any reuse by COUNTY for another project or project location shall be at COUNTY's sole risk.

- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the CONTRACT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

## **7.22 Claims Filed by County's Construction Contractor**

- A. If claims are filed by COUNTY's construction contractor relating to work performed by A-E's personnel, and additional information or assistance from A-E's personnel is required in order to evaluate or defend against such claims; A-E agrees to make its personnel available for consultation with COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. A-E's personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for A-E's personnel services under this CONTRACT.
- C. Services of A-E's personnel in connection with COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this CONTRACT in order to resolve the construction claims.

## **7.23 Confidentiality of Data**

- A. All financial, statistical, personal, technical, or other data and information relative to COUNTY's operations, which are designated confidential by COUNTY and made available to A-E in order to carry out this CONTRACT, shall be protected by A-E from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by COUNTY relating to the CONTRACT, shall not authorize A-E to further disclose such information, or disseminate the same on any other occasion.
- C. A-E shall not comment publicly to the press or any other media regarding the CONTRACT or COUNTY's actions on the same, except to COUNTY's staff, A-E's own personnel involved in the performance of this CONTRACT, at public hearings, or in response to questions from a Legislative committee.
- D. A-E shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this CONTRACT without prior review of the contents thereof by COUNTY, and receipt of COUNTY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by A-E to any entity, other than COUNTY, Caltrans, and/or FHWA. All of the

materials prepared or assembled by A-E pursuant to performance of this CONTRACT are confidential and A-E agrees that they shall not be made available to any individual or organization without the prior written approval of COUNTY or except by court order. If A-E or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this CONTRACT, COUNTY has the right to reimbursement and indemnity from A-E for any damages caused by A-E releasing the information, including, but not limited to, COUNTY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **7.24 National Labor Relations Board Certification**

In accordance with Public Contract Code Section 10296, A-E hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against A-E within the immediately preceding two-year period, because of A-E's failure to comply with an order of a federal court that orders A-E to comply with an order of the National Labor Relations Board.

#### **7.25 Evaluation of A-E**

A-E's performance will be evaluated by COUNTY. A copy of the evaluation will be sent to A-E for comments. The evaluation together with the comments shall be retained as part of the CONTRACT record.

#### **7.26 Retention of Funds**

No retainage will be withheld by COUNTY from progress payments due the A-E. Retainage by the A-E or subcontractors is prohibited, and no retainage will be held by the A-E from progress due subcontractors. Any violation of this provision shall subject the violating A-E or subcontractors to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the A-E or subcontractor in the event of a dispute involving late payment or nonpayment by the A-E or deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE A-E and subcontractors.



County of Orange, OC Public Works  
GHD Inc.


MA-080-20010599

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

**GHD INC.,**  
a California Corporation,

Date: 11/12/2019

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

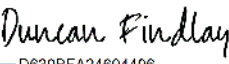
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SARMAD FARJO, Vice President  
Print Name & Title

*(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: 11/13/2019

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

DocuSigned by:  
  
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DUNCAN FINDLAY, Secretary  
Print Name & Title

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

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

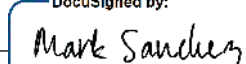
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**APPROVED AS TO FORM**  
Office of the County Counsel  
Orange County, California

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


DATE: 11/13/2019 MARK N. SANCHEZ, Deputy County Counsel

**ATTACHMENT A  
SCOPE OF WORK****I. Purpose and Scope of Work**

- A. A gap in the 66-mile regional bikeway corridor called the OC Loop is along the length of the Coyote Creek flood control channel upstream and downstream of the Santa Ana Freeway (I-5). This gap is designated as Segments O, P, and Q. The OC Loop Segments O, P, Q (proposed project) begins at the existing Coyote Creek Bikeway (cities of Cerritos and La Palma) where the flood channel divides into north and east forks, running 2.7 miles connecting to another portion of the Coyote Creek Bikeway at La Mirada Blvd./Malvern Ave. in the cities of Buena Park and La Mirada. The Los Angeles County Flood Control District owns the vast majority of the property required for this project. A-E environmental services, and some design services, are required to complete the initial Project Approval and Environmental Documentation (PA&ED) phase.
- B. When constructed, the Coyote Creek Class I Bikeway (Segments O, P, Q) will close an existing bikeway gap along OC Loop, increase the use of active transportation travel modes, enhance safety and mobility for non-motorized users, advance efforts to achieve greenhouse gas reduction goals, improve aesthetics, access and maintenance to the flood control channel, and enhance public health. In addition, the proposed project is a safety and mobility enhancement for the County, included in the 2008 Coyote Creek Bikeway Master Plan (Rivers and Mountains Conservancy and Trails4All), 2009 OCTA Commuter Bikeway Strategic Plan, 2012 OCTA Fourth District Bikeways Strategy report, 2014 County of Orange General Plan, and the 2015 OC Loop Gap Feasibility Study (OC Parks).

**II. Environmental Services**

- A. In compliance with federal and state environmental regulations, A-E and its sub-consultants, if any, shall be responsible for all direct and related work in preparing documentation to fulfil the requirements of the California Environmental Quality Act (CEQA), and associated environmental technical studies to complete the Project.
- B. The County of Orange (County) will be the lead agency for CEQA and Caltrans will serve as the lead agency pursuant for NEPA under Section 6005 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act - Legacy for Users (SAFETEA-LU). For Caltrans, the project will be processed through the Local Assistance Office; therefore, documentation would be prepared pursuant to Chapter 6 of the Local Assistance Procedures Manual (2018) and the Caltrans Standard Environmental Reference (SER).
- C. The Preliminary Environmental Study (PES) for Segments O, P, and Q has been signed by the County and by Caltrans. Caltrans has required several technical studies that are identified below.

**III. Task 1 - Project Coordination Meetings**

The A-E Project Manager is expected to attend at least six (6) in-person meetings and twenty (20) teleconference meetings to report on the progress, budget, and schedule performance related to environmental approvals for CEQA and the technical studies. The A-E shall provide technical information and respond to questions and comments raised by the County or Caltrans staff. The A-E must also be available to discuss and explain issues or recommendations made at meetings. Minutes of all meetings will be prepared by A-E and submitted to meeting attendees within five

(5) working days following each meeting. At the request of County, the A-E shall attend other meetings or presentations as needed to complete the terms of this scope.

#### **IV. Task 2 – Review of Background information**

For details, the A-E shall review the draft construction drawings for this project prepared by Mark Thomas Associates titled; “Plans for Improvement of Coyote Creek Class I Bikeway Segments O, P & Q” dated July 2018. A written project description of the project is also contained within the signed PES document.

#### **V. Task 3 – Topographical Survey**

- A. The A-E shall obtain a Licensed Surveyor to provide full topographical survey at several locations in order to complete studies needed during the Project Approval and Environmental Document phase. The locations for which topographical survey is required at this time include:
1. North Fork Coyote Creek at pedestrian bridge (1000-ft upstream and downstream in channel)
  2. Valley View undercrossing (1000-ft upstream and downstream in channel (east fork))
  3. Artesia Boulevard undercrossing (1000-ft upstream and downstream in channel and under bridge)
  4. Three railroad crossings (upstream and downstream as needed – survey of channel not required)
  5. La Mirada Boulevard undercrossing (1000-ft upstream and downstream in channel and under bridge)
  6. Upstream and downstream of South Firestone Boulevard sufficient to prepare draft construction drawings and report for that open cut excavation
- B. County’s Project Manager will arrange a meeting between A-E’s Surveyor and the Office of the OC Surveyor to discuss datum and other surveying issues. The remainder of the topographical survey in order to prepare final plans will be conducted in the next phase of the project.

#### **VI. Task 4 – Bridge Type Selection Reports**

- A. County staff, in June 2018, met with Burlington Northern and Santa Fe and Union Pacific railroads to discuss this project. One staff of one of the railroads requested a Bridge Type Selection Report (BTSR) with alternatives to the proposed under-crossings. One railroad employee requested that they be provided with options including overcrossings in lieu of under-crossings and another employee stated that under-crossings rather than overcrossings would be the railroads preferred option. Stairs and elevators are unacceptable to the County in meeting project objectives of unobstructed access for the cycling community. In order to meet ADA requirements and the vertical clearance above the tracks, a pedestrian overcrossing could be about 800-ft long. Under-crossings (jack and bore of prefabricated concrete box) are the County’s preferred alternative at these two railroad crossings (plus one at-grade crossing). There may be a perception among cyclists, real or perceived, that under-crossings require less effort to traverse than bridge structures and the goal of the project is to entice as many cyclists as possible to use the trail.
- B. It appears that the railroads will require the proposed RCBs or over-crossings to be under or over the entire width of their right of way to accommodate any future expansion of the railroad. A-E shall prepare construction drawings and specifications to the 35% complete level of the three

railroad crossings proposed for this project and submit them to the railroads with the BTSR. The railroad has verbally accepted the at-grade railroad crossing, with signal arms, at Station 97+50.

- C. For uniformity with most pedestrian bridges in Orange County it is required that the two proposed crossings of Coyote Creek be pre-fabricated steel. The BTSRs for these two bridges would only consider pre-fabricated steel truss with wooden deck but would include alternatives within that type of bridge structure.
- D. A-E shall also obtain the services of a Civil Engineer to design, to the 35% complete level, (including CADD drawings) and determine the dimensions of the two jacking pits and two receiving pits and other details of the jacking operation. Typically, jacking pits are installed with vertical walls (using pile driving) to allow the jacking equipment to push against the back wall of the pit. After the Reinforced Concrete Boxes (RCBs) have been pushed into place, it is expected that the approaches to the jacking/receiving pits would be completed by open cut excavation but those areas may also require sheet piles due to space constraints between the right-of-way line and the flood control channel. It is expected that Burlington, Northern and Santa Fe (BNSF) and Union Pacific (UP), and Metrolink will require a railroad inspector to be on-site whenever the construction contractor is working.
- E. A-E's Civil Engineer shall determine the required dimensions of the westerly abutment of the 200-ft long pre-fabricated bridge to be used in the calculations to determine hydraulic impacts to the channel and other constructability issues. It may be possible to shift the existing Coyote Creek Bike Trail approximately four or five feet just at the location of the proposed T-intersection of the two trails in order to fully place the proposed abutment outside of the channel slope; however, Los Angeles County may not want to alter the existing trail. The easterly abutment is fully outside the channel and does not need to be designed at this time. The abutments for the second new pedestrian bridge near the upstream end of the project will be fully outside the vertical walled channel.
- F. In general, A-E would task their Civil Engineer, rather than County staff, to provide information for the CEQA document regarding means and methods options, potential material volumes, potential equipment (horsepower) and potential number of truck trips.
- G. This task includes preparing 35% complete construction drawings and a report on the open cut excavation of South Firestone Boulevard and the tie-in to the bike trail opening under I-5 that the construction contractor for Caltrans is currently installing. The report shall include traffic control issues. 24-hour construction is proposed for this open-cut excavation with full-time flaggers to allow two-way traffic on one lane in two phases. The report shall explore this concept.
- H. Trojan Way, just upstream of I-5, is also currently under complete re-construction by Caltrans and an at-grade crossing is proposed there. A-E shall explore the latest re-construction of Trojan Way and identify any issues associated with the proposed alignment of the trail at this location.

**Deliverables:**

- 1. Draft BTSRs for each railroad crossing and channel crossing (4 total) – electronic copy
- 2. Final BTSRs for each railroad crossing and channel crossing (4 total) – electronic copy
- 3. 35% complete construction drawings of the railroad crossings and approaches
- 4. Preliminary Design and Report for the two RCB jacking operations
- 5. 35% complete construction drawings and report for the open cut excavation of South Firestone Boulevard and the proposed at-grade crossing of Trojan Way

**VII. Task 5 - CEQA Initial Study & Mitigated Negative Declaration (IS/MND)**

- A. For CEQA, it is assumed that all impacts can be reduced to a level of less than significant and an Initial Study/Mitigated Negative Declaration (IS/MND) shall be prepared. The A-E shall prepare an IS/MND in accordance with the requirements of CEQA Guidelines, Section 15063 (Public Resources Code 21080) and County's Local CEQA Procedures Manual including the MND format. The document shall include analysis of all required CEQA topics, identify potentially significant environmental effects, and identify all feasible measures to mitigate those effects to a less than significant level. Should it become clear that an IS/MND is not the appropriate CEQA documentation, the A-E will contact the County immediately.
- B. The A-E shall prepare a draft IS/MND and circulate it for a minimum of 20-day public review period. The County will review the first Screen-check of the document. Once comments have been received and revisions made, a revised Screen-check document will be submitted for concurrent review by Caltrans. After comments have been received, and revisions made to the document and approved by OC Development Services/Planning, the document will be circulated for a minimum of 20-day public review period. No public meetings during the public review period are assumed to be necessary as part of this task. The A-E shall also prepare a Notice of Completion and Notice of Intent to Adopt a Mitigated Negative Declaration using the County template to accompany the public review documents.
- C. Following the 20-day review, a Final IS/MND shall be prepared to include responses to comments and incorporate applicable revisions. The A-E may be asked to formulate a comment letter, draft responses, a Final MND preface, and if applicable, a discussion of edits made to the MND as a result of the review period. The County shall be provided one Screen-check of the Final IS/MND for review prior to final approval.
- D. Once the document has been approved by OC Development Services/Planning, and prior to certification by the OC Board of Supervisors, a Notice of Intent to Adopt a Mitigated Negative declaration will be published in the newspaper by the A-E. The Notice will be in a section of general readership in the Orange County Register. After OC Board of Supervisors approval of the project, the County will file a Notice of Determination with the Orange County Clerk-Recorder.
- E. All associated fees shall be provided by A-E and included with the scope of work.
- F. The proposed project does not include new landscaping at this time; however, if landscaping were to be incorporated it would consist of very low maintenance or xeriscape. Irrigation would be avoided, if possible. No trees would be planted. The CEQA document should include the installation of decomposed granite landscape areas, mulch areas, and minor areas of low native grasses or shrubs. Concrete curbs could be used to separate landscape areas. The County has used rock piles (larger decorative rock) as landscaping features (Santa Ana River Bike Trail) with positive results. The landscaping plan would not include any rest areas or benches. No lighting is proposed.
- G. Traffic related impacts shall be discussed in the CEQA document but no separate Traffic Technical Memorandum is required. There are several proposed new at grade, signalized crossings. There is a proposed signalized crossing of Knott Avenue (Station 92+50), the railroad near Station 96+75 and Stage Road near Station 132+00. Temporary closure (in two phases) of South Firestone during an open-cut excavation of the road to install a large pre-cast RCB (the bike trail) is also being

proposed. Each phase could be up to a week and 24-hour construction will be required. During the closure, two-way traffic on one-lane will be used with flaggers.

- H. Air quality impacts shall be discussed in the CEQA document but no separate Air Quality Technical Memorandum is required.

**Deliverables:**

1. Draft IS/MND – electronic copy & 5 hard copies for distribution
2. Final IS/MND – electronic copy & 5 hard copies for distribution and files
3. Notice of Completion – electronic copy
4. Notice of Intent to Adopt a MND – electronic copy
5. Notice of Determination – electronic copy
6. Newspaper publication and fees – electronic copy

**VIII. Task 6 – Initial Site Assessment (ISA) for Hazardous Materials**

- A. The A-E shall prepare an Initial Site Assessment (ISA) to evaluate the potential presence of sources of hazardous waste contamination that could adversely affect the soil and/or groundwater of the site and other potential environmental impacts from hazardous materials. The ISA shall conform to Caltrans Project Development Procedures Manual (PDPM), including the following:
1. A review of available project area information and historical aerial photographs
  2. Environmental database search reports and other pertinent information for the preparation of the ISA
  3. Completion of Caltrans ISA checklist for Hazardous Waste
- B. A-E shall provide a screen-check review to the County and Caltrans District 12. Upon County and Caltrans review, A-E shall address comments, incorporate revisions and/or provide responses to finalize the ISA and obtain final approval by Caltrans. The ISA shall include approximately 280-ft long by about 15-ft wide of private property on the north and south sides of La Mirada Boulevard between Coyote Creek and Village Circle Way.

**Deliverables:**

1. Screen-check of Initial Site Assessment – electronic copy
2. Initial Site Assessment – electronic copy

**IX. Task 7 - Floodplain Location Hydraulic Study & Summary Floodplain Encroachment Report**

- A. There is a proposed undercrossing of Valley View within the northerly concrete slope of the channel, a 6-ft wide cantilevered trail above the vertical walled flood control channel under the Artesia bridge, and a cantilevered trail above the vertical walled flood control channel under La Mirada Boulevard. Several feet of the top of the existing concrete flood control channel under Artesia (west side only) and La Mirada (east side only) will be removed; the existing bridge abutment wall serve as the new channel wall. The remainder of the proposed under-crossings for the project are outside of the channel. The two proposed pedestrian bridges free span the channels with no proposed center piers. One of the bridge abutments may have to be contained within the very upper limits of the channel slope immediately adjacent to the existing north fork Coyote Creek Bikeway.



- B. The A-E shall prepare a Floodplain Location Hydraulic Study, consistent with 23 CFR 650 Subpart A, Section 650 III (b)(c)(d). The goal of the Location Hydraulic Study is to determine if the project would result in minimal or significant encroachment on the base floodplain and if the project is consistent with existing watershed and floodplain management programs. The Location Hydraulic Study will include a discussion of: (1) the risks associated with implementation of the project, (2) the impacts on natural and beneficial flood-plain values, (3) the support of probable incompatible flood-plain development, (4) the measures to minimize flood-plain impacts associated with the project, and (5) the measures to restore and preserve the natural and beneficial floodplain values impacted by the project.

#### **X. Task 7.1 - Hydraulic analysis**

To determine the impacts associated with the project, floodplain hydraulic geometric models will be prepared by the A-E for the portion of the channel system where the proposed undercrossing of Valley View will be located as well as the proposed work at Artesia Boulevard and La Mirada Boulevard and the proposed bridge abutment on the westerly side of Coyote Creek at Station 10+00. The 25% complete construction drawings contain the conceptual design of the Valley View undercrossing. A-E will need to obtain the services of a civil engineer to complete the design of the undercrossing, to 100 percent final design, in order to properly complete the hydraulic analysis to ensure that the new undercrossing does not negatively affect the channel hydraulics. Coyote Creek flood control channel was constructed by the U.S. Army Corps of Engineers (USACE) and turned over to the Los Angeles County Flood Control District (LACFCD) for ownership and maintenance. OCPW will use the hydraulic analysis prepared by the A-E in order to obtain the required approvals (Section 408 permit) from the USACE and LACFCD. The analysis will extend approximately a minimum of 1,000 feet upstream and downstream of the proposed undercrossing locations at Valley View, Artesia, La Mirada and Coyote Creek North Fork in order to adequately assess project impacts. Previously prepared floodplain hydraulic and floodway analysis performed by other investigators or agencies will be obtained and reviewed to ensure consistency with results and the hydraulic model variables. The floodplain evaluation will include the analysis of two different conditions: (1) baseline condition or an effective floodplain model reflecting the existing condition of the natural floodplain prior to the proposed undercrossing construction, and (2) developed condition or modified floodplain analysis, which includes the modifications of the floodplain for the proposed undercrossing, cantilevered section and potential encroachment within the floodplain. The hydraulic analysis will establish the water surface profiles and hydraulic parameters, which identify the characteristics of the floodplain. The floodplain will be evaluated utilizing the one dimensional water surface profile program developed by the USACE, HEC-RAS. The hydrologic data for the 100-year flowrates which will be incorporated into the floodplain model will be based upon previous hydrologic information and no additional regional hydrology will be performed as part of this study unless through separate addendum. Channel geometric data will be obtained from digital topographic mapping provided by the A-E's Surveyor for this project.

#### **XI. Task 7.2 - 100-year Floodplain Maps**

The A-E will prepare 100-year floodplain maps utilizing the results of the floodplain hydraulic modeling. The maps will identify and define the location of the existing and proposed floodplain boundary limits. The floodplain map exhibits will identify existing and proposed floodplain encroachment by the existing and proposed bridge structures, respectively. The floodplain maps will illustrate the locations of the hydraulic model cross sections utilized in the HEC-RAS model and provide relevant summary of the information at key cross sections.

**XII. Task 7.3 - Summary of Floodplain Encroachment Report**

- A. The Location Hydraulic Study will summarize the existing and proposed floodplain characteristics and identify impacts of the project. Local, state, and federal water resources and floodplain management agencies will be consulted to determine if the project is consistent with existing watershed and floodplain management programs. The report will outline the methodology utilized for the analyses and provide an evaluation of the overall level of flood protection provided by the existing channel in comparison to the proposed condition, which is determined by the proposed undercrossing design that will be finalized by the A-E. A Summary Floodplain Encroachment Report form shall be completed and included in the Location Hydraulic Study.

**Deliverables:**

1. Final design of the undercrossing of Valley View
2. Location Hydraulic Study Report (new structures in the channel include one abutment in the north fork Coyote Creek Channel, undercrossing of Valley View, and removal of several feet of the top of the concrete vertical wall under Artesia and La Mirada)
3. HEC-RAS models for both conditions
4. Location Hydraulic Study Form for Caltrans review
5. Responses to Caltrans comments during review process

**XIII. Task 8 - Biological Resources - Natural Environmental Study for Minimal Impact (NES-MI)**

- A. The project will require a Natural Environmental Study for Minimal Impact (NES-MI) to characterize and document the environmental setting and potential biological impacts of the Project.
- B. A NES-MI consistent with the current guidelines will be developed based on the results of various biological surveys, analyses, and data compilation. The report will describe: (1) the methodology used to conduct the biological surveys; (2) a detailed description of the existing vegetation types and associated wildlife resources on the project site; (3) potential impacts from the project; and (4) recommended mitigation measures to reduce identified impacts to less than significant levels.
- C. The NES-MI would focus on the trail alignment and buffer area. However, the NES-MI will include a discussion of storing supplies and equipment on the concrete invert of Coyote Creek for the installation of the 200-ft long prefabricated bridge and abutments and access to that location by two large cranes. The NES-MI will include staging on the concrete invert of the flood control channel at Valley View and Artesia and access routes in the channel to these locations for construction equipment.
- D. Several ornamental trees on La Mirada Avenue (approximately 280 linear feet) may need to be removed for the installation of a Class 1 trail if the undercrossing of La Mirada is determined to be infeasible.

**Deliverables:**

1. Draft NES-MI – electronic copy
2. Final NES-MI – electronic copy

**XIV. Task 9 - Jurisdictional Delineation**

- A. The A-E will perform a jurisdictional delineation (JD) to determine jurisdictional “waters of the U.S.” and “waters of the State of California”, including wetlands (if present), located within the boundaries of the proposed project only at the bridge location on Coyote Creek, bridge location at Valley View and the bridge location at Artesia and La Mirada. The delineation will determine the jurisdictional boundaries based on the ordinary high water mark(s) (OHWM) within the project site and indicate the existence of any adjacent wetlands not within the jurisdictional ordinary high water mark. The actual presence or absence of wetlands onsite will be verified through the determination of the presence of hydrologic conditions, hydrophytic vegetation, and hydric soils pursuant to the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region, September 2008.
- B. Using detailed mapping of the project area provided by the project engineer, A-E shall prepare a Delineation of Jurisdictional Waters Report including delineation map(s) and the results of the field delineation. The A-E will provide an assessment of acreage considered by the USACE and the California Department of Fish and Wildlife (CDFW) to be jurisdictional “waters of the U.S.” and “waters of the State of California” within the project site. The A-E will mark on the JD the location of the proposed Valley View undercrossing based on the design to be completed by the A-E. OCPW will prepare all required permit applications to the USACE, CDFW and Santa Ana or Los Angeles Regional Water Quality Control Boards.
- C. This task also includes the preparation of exhibits (11” by 17”) for staging areas under the proposed 200-ft long pre-fabricated bridge on the floor of the channel and access points to that location and staging under the Valley View Bridge, Artesia Boulevard Bridge, and La Mirada Boulevard Bridge and access points to those locations.

**Deliverables:**

- 1. Draft JD – electronic copy
- 2. Final JD – electronic copy
- 3. Exhibits of staging areas inside the channel and access

**XV. Task 10 - Cultural Resources – APE, HPSR, ASR, HRER**

- A. Cultural Resources (Section 106 Evaluation) - A technical study that satisfies the requirements of Section 106 of the National Historic Preservation Act of 1966, as well as state historic preservation laws and regulations is required. This scope of work assumes the analysis will focus on archaeological resources and that there would be no need for an architectural evaluation for the project. The study will follow the requirements of the Caltrans SER, Volume 2 (Cultural Resources) issued in May 2005 and guidance provided by the 2004 Programmatic Agreement (PA).

**1. Task 10.1 - Area of Potential Effects (APE) map**

- a. The A-E will complete a cultural resources inventory for the proposed project. At a minimum, the inventory will include preparation of and consultation on an Area of Potential Effects (APE) map, a records search for an appropriate buffer around the project area, initiation of Native American consultation, a pedestrian survey, and documentation of study results in a formal report. All of A- E’s staff will meet or exceed Secretary of Interior’s standards and all studies will be performed in order to satisfy requirements of

CEQA, NEPA, and Section 106 of the National Historic Preservation Act (NHPA), consistent with Caltrans standards.

- b. The APE map will be prepared based on existing documentation of the limits of project construction and the potential for direct and indirect (visual and atmospheric) impacts. Typically, the direct impacts APE will be based on the physical limits of ground disturbance while a typical indirect impacts APE is a ½-mile buffer around the project limits. The A-E will prepare the APE map and coordinate with OCPW to develop the APE limits with the necessary entities. Following approval of the APE map, the A-E will complete a records search for a minimum ½-mile buffer around the project limits at the South Central Coastal Information Center (SCCIC) at CSU Fullerton. The A-E will also initiate correspondence with the Native American Heritage Commission (NAHC) and with tribal individuals and organizations identified by the NAHC on behalf of OCPW.

## 2. Task 10.2 - Archaeological Survey Report (ASR)

- a. The A-E will complete a phase I intensive pedestrian survey of the entire APE. This will involve walking standard survey transects spaced no more than 10-meters apart of the entire direct impacts APE, as well as a targeted survey of the built environment identified in the indirect effects APE. The A-E anticipates that no archaeological sites will be identified requiring formal documentation and evaluation. The A-E will prepare a standard Archaeological Survey Report (ASR) (according to Caltrans Standard Environmental Reference (SER) Environmental Handbook Cultural Resources, Volume 2).

## 3. Task 10.3 - Historic Properties Survey Report (HPSR)

- a. A Historic Properties Survey Report (HPSR) is required for this project.
- b. The HPSR will include (1) a review of the methods used to identify cultural resources in the vicinity of the project; (2) a review of previous research conducted in the vicinity; (3) a review of known archaeological and historic structural resources in the vicinity; (4) an assessment of the project's potential to adversely impact any cultural resources; and (5) recommendations toward mitigating any adverse impacts to a level of less than significant.
- c. State of California DPR 523 records for any archaeological or historic structural resources identified in or directly adjacent to the project will be included in a confidential appendix to the report (not for public distribution). A-E may submit the confidential appendix directly to the Caltrans archeologist and bypass OC Public Works.

## 4. Task 10.4 - Historic Resources Evaluation Report (HRER) (if needed)

- a. A Historic Resources Evaluation Report (HRER) shall be prepared per Caltrans Guidelines, if required.

### **Deliverables:**

1. Area of Potential Effects (APE) map
2. Historical Property Survey Report (HPSR)
3. Archaeological Survey Report (ASR)
4. Historical Resources Evaluation Report (HRER) (if needed)

**XVI. Task 11 - Design of Cantilevered Section**

- A. The draft construction drawings show concrete shafts to be constructed under Artesia Boulevard within a 6-ft wide area to support 6-ft of cantilevered trail over the flood control channel. Construction of the shafts will be difficult considering it is covered by the bridge structure. There is only 10-ft clearance between the proposed trail and the bridge soffit after several feet of the top of the concrete flood control channel are removed. Driving piles (cast-in-steel-shells) through the bridge deck would most likely not be allowed due to structural stability issues of the bridge and traffic concerns but should be assessed if recommended by A-E's engineer as the only option. The A-E shall obtain the services of a civil or structural engineer to design, to the 90 percent complete level, the proposed improvements under Artesia including optional construction means and methods and structural impacts to the existing bridge abutment and existing concrete channel wall due to the proposed shafts. A separate report shall be prepared to describe the findings. The structural analysis needs to include hydrostatic loading on the existing bridge abutment since it will become the new wall of the flood control channel during extreme flooding events. Scaffolding can be placed on the concrete channel invert in order to construct the cantilevered section over the top of the channel (OCPW to obtain approval from state and federal regulatory agencies). OCPW will provide the bridge as-builts for reference.
- B. The draft construction drawings do not show an undercrossing of La Mirada Boulevard but rather display a proposed alignment on Mirada Boulevard since there is a signalized intersection only 280-ft away. The County will consider an optional bid during the construction phase and if bids are favorable would prefer to construct an undercrossing with cantilevered trail under La Mirada as well. A-E shall perform all required structural analysis and design of the undercrossing of La Mirada as discussed above for the Artesia undercrossing.
- C. The A-E shall submit the 90 percent complete construction drawings and the report to the Los Angeles County Flood Control District, U.S. Army Corps of Engineers, and the City of Buena Park for preliminary approval.

**Deliverables:**

1. Draft Design and Report for the cantilevered section under Artesia – electronic copy
2. Final Design and Report for the cantilevered section under Artesia – electronic copy
3. Draft Design and Report for the cantilevered section under La Mirada – electronic copy
4. Final Design and Report for the cantilevered section under La Mirada – electronic copy

**XVII. Task 12 - Signage Plan**

- A. The A-E shall develop a signage plan (CADD drafted plans as well as a report) including maps and trail information for trail users. Sign size, location and quantity shall be recommended by the A-E. No rest areas or benches are proposed. No lighting is proposed.

**Deliverables:**

1. Draft Signage Plan – electronic copy
2. Final Signage Plan – electronic copy

**XVIII. Task 13 – Utility Relocations Plan**

- A. The A-E shall review all of the utility information that OCPW has obtained from the utility companies. The A-E shall develop a utility relocations plan for the project. A Chevron fuel line



just downstream of the Metrolink crossing most likely will need to be relocated to accommodate the new RCB. The mass of utilities (Crimson pipeline) just upstream of I-5 should not have to be relocated although the trail will be adjacent to the pipelines. It may be possible to avoid the relocation of the Kinder Morgan pipeline at Station 70+50; however, it is possible that pipeline will have to be relocated to provide additional clearance from the new RCB. A water line on the Artesia Boulevard bridge should not have to be relocated.

- B. A-E's Civil Engineer shall determine from the utility plans and in discussion with the utility owners and based on available area between the right-of-way boundary and the top of the flood control channel, the clear distance between the alignment of the existing Kinder Morgan pipeline and the proposed RCB. The County will provide the plans from the utility companies for reference.

**Deliverables:**

1. Draft Utility Relocations Plan - electronic copy
2. Draft Utility Relocations Plan - electronic copy

**XIX. Task 14 – Preliminary Approvals from Stakeholders (Los Angeles County Department of Public Works/Los Angeles County Flood Control District (LACFCD), U.S. Army Corps of Engineers (Engineering staff not Regulatory staff), Caltrans District 12, Burlington-Northern & Santa-Fe (BNSF), Union Pacific (UP), Metrolink, and Utility Companies including the California Public Utilities Commission (CPUC), City of La Mirada, and City of Buena Park)**

- A. The County has conducted initial meetings with the Burlington-Northern & Santa-Fe, Union Pacific, and Metrolink railroads. After the tasks contained within this Scope of Work have been completed and the CEQA document has been certified, the County will release a subsequent Request for Proposals for the preparation of Plans, Specifications and Cost Estimate (PS&E) and all final approvals from the railroads and utilities. The railroads are requiring 35% complete construction drawings to review in order to issue a letter of preliminary approval. A-E shall coordinate and obtain preliminary approvals from Los Angeles County Department of Public Works/Los Angeles County Flood Control District, U.S. Army Corps of Engineers, Caltrans (at I-5), Burlington-Northern & Santa-Fe, Union Pacific, Metrolink/Southern California Regional Rail Authority, and Utility Companies including the California Public Utilities Commission. City of La Mirada, and City of Buena Park.

**Deliverables:**

1. Letter or e-mail of preliminary approval from LACFCD
2. Letter or e-mail of preliminary approval from USACE (Engineering not Regulatory)
3. Letter or e-mail of preliminary approval from Caltrans regarding bikeway under I-5
4. Letter or e-mail of preliminary approval from BNSF
5. Letter or e-mail of preliminary approval from UP
6. Letter or e-mail of preliminary approval from Metrolink/SCRRA
7. Letter or e-mail of preliminary approval from Chevron
8. Letter or e-mail of preliminary approval from Crimson Pipelines
9. Letter or e-mail of preliminary approval from Kinder Morgan
10. Letter or e-mail of preliminary approval from City of La Mirada
11. Letter or e-mail of preliminary approval from City of Buena Park



**XX. Task 15 - Alternative Alignment - Optional**

- A. The County has developed an alternative alignment in the event that funding issues affect the implementation of the original proposed alignment. The alternative alignment is the same as the original proposed alignment up to Artesia Boulevard. At the downstream side of Artesia Boulevard, a pedestrian bridge or cantilevered bridge off the side of the existing bridge could be installed across the channel. A Class 1 bikeway could be constructed along the south side of Artesia Boulevard to Firestone Boulevard. The Class 1 bikeway would continue up Firestone Boulevard to Knott Avenue. At Knott Avenue, the City of La Mirada is allowing only a Class II on-road (bike lanes) system. The City of La Mirada would complete the CEQA documentation and approvals for much of the remainder of the alternative alignment, which would take cyclists down Firestone Boulevard to Trojan Way to Alondra Boulevard to Stage Road and down Stage Road to the flood control channel. At Stage Road and the flood control channel and continuing upstream, the alternative alignment is the same as the alignment shown on the draft construction drawings.
- B. The A-E shall include in the CEQA document (Task 5) and NES-MI (Task 8) the alternative alignment including a pedestrian bridge (cantilever or freestanding) at Artesia Boulevard and Class 1 bikeway on Artesia Boulevard to Firestone Boulevard and Firestone Boulevard to Knott Avenue.
- C. A-E shall only begin the optional items listed below and listed in the Cost Proposal, under Tasks 15, upon specific written directive from County.

**Deliverables:**

- 1. Inclusion of route alternative in task 5/8 CEQA/NEPA documents
- 2. Draft B TSR for bikeway undercrossing at La Mirada Blvd (optional)
- 3. Final B TSR for undercrossing at La Mirada Blvd (35% PS&E) (optional)
- 4. Feasibility Study/cost alternatives for bikeway along Artesia Blvd (optional)

**XXI. Project Schedule**

Exhibit 1 – OC Loop Segments O, P, and Q Project Schedule, provides a full project schedule.

ATTACHMENT B  
COST/COMPENSATION

- I. COMPENSATION:** This is a **Specified Rates of Compensation** CONTRACT between COUNTY and A-E for **Architect-Engineer (A-E) Environmental Services for OC Loop Segments O, P and Q** as set forth in Attachment A, "Scope of Work".

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

- II. PRICING:** Payment shall be made in accordance with the provisions of this CONTRACT. Partial progress payments may be allowed at the discretion of the COUNTY Project Manager. Payment shall be as follows:

GHD Inc.					
ICR 172.55%, Fee 9.75%, 3% Increase/Year					
CLASSIFICATION TITLES		FY 1 (ends 6/30/20)	FY 2 (begins 7/1/20)	FY 3 (begins 7/1/21)	
Project Manager		\$280.43	\$288.84	\$297.51	
Design Manager		\$272.89	\$281.08	\$289.51	
Asst. Design Mgr./Sr. Civil Engr.		\$141.40	\$145.64	\$150.01	
Senior Civil lead		\$230.09	\$236.99	\$244.10	
ATP lead		\$199.75	\$205.75	\$211.92	
Senior Tunnel Engineer		\$220.13	\$226.73	\$233.53	
Principal Utility Engineer		\$263.92	\$271.83	\$279.99	
Sr. Fuel Line Engineer		\$206.28	\$212.46	\$218.84	
Sr. Traffic Engineer		\$194.13	\$199.96	\$205.95	
Sr. Structural Engineer		\$186.95	\$192.56	\$198.34	
Structural QA/QC		\$287.61	\$296.24	\$305.12	
Sr. Hydraulic Engineer		\$215.73	\$222.20	\$228.87	
Sr. Water Quality Engineer		\$153.87	\$158.49	\$163.24	
Sr. Drainage Engineer		\$153.87	\$158.49	\$163.24	
Drainage Engineer		\$116.36	\$119.85	\$123.45	
Staff Engineer		\$93.48	\$96.28	\$99.17	
Admin		\$78.19	\$80.54	\$82.95	
Other Direct Costs					
Description of Item		Quantity	Unit	Unit Cost	Total
Mileage		1000	Miles	\$0.545	\$545.00
Parking		30	Each	\$6	\$180.00

County of Orange, OC Public Works  
GHD Inc.

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Outside Printing	600	Each	\$1.60	\$960.00
Courier ("FedEx")	6	Each	\$35	\$210.00
Utility Potholes	10	Each	\$1,000	\$10,000.00
Travel (William Wheeler)	1	LS	\$1,000	\$1,000.00
<b>Total Other Direct Costs (ODCs)</b>				<b>\$12,895.00</b>

TranSystems				
ICR 150.75%, Fee 10.00%, 3% Increase/Year				
CLASSIFICATION TITLES	FY 1 (ends 12/31/19)	FY 2 (begins 1/1/20)	FY 3 (begins 1/1/21)	
Sr. Structural Lead	\$457.76	\$471.49	\$485.64	
Sr. Structural Engineer	\$184.20	\$189.72	\$195.41	
Engineer III	\$106.14	\$109.32	\$112.60	
Engineer II	\$103.43	\$106.54	\$109.73	
Other Direct Costs				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage	500	Miles	\$0.50	\$250.00
Parking	10	Total	\$10	\$100.00
Outside Printing	4	Each	\$200	\$800.00
Courier ("FedEx")	4	Each	\$50	\$200.00
<b>Total Other Direct Costs (ODCs)</b>				<b>\$1,350.00</b>

UltraSystems				
ICR 86.07%, Fee 8.735%, 3% Increase/Year				
CLASSIFICATION TITLES	FY 1 (ends 12/31/19)	FY 2 (begins 1/1/20)	FY 3 (begins 1/1/21)	
Sr. Environmental Lead	\$145.92	\$150.29	\$154.80	
Sr. Project Manager	\$70.04	\$72.15	\$74.31	
Sr. Principal Engineer	\$99.42	\$102.40	\$105.48	
Sr. Engineer	\$97.28	\$100.20	\$103.20	
Sr. Environmental Planner	\$97.28	\$100.20	\$103.20	
Sr. Planner	\$77.81	\$80.15	\$82.55	
Associate Planner	\$70.47	\$72.58	\$74.76	
Senior Biologist	\$82.69	\$85.17	\$87.73	
Staff Biologist II	\$70.81	\$72.94	\$75.13	
Staff Biologist I	\$61.65	\$63.50	\$65.40	
Cultural Specialist	\$56.87	\$58.58	\$60.34	
Archaeologist	\$40.46	\$41.68	\$42.93	
Sr. GIS Manager	\$106.22	\$109.41	\$112.69	
Admin	\$44.51	\$45.85	\$47.22	
Other Direct Costs				
Description of Item	Quantity	Unit	Unit Cost	Total

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Mileage	425	Miles	\$0.58	\$246.50
Reports Printing	15	Each	\$100	\$1,500.00
Courier ("FedEx")	12	Each	\$45	\$540.00
CDs	20	Each	\$15	\$300.00
Cultural CHRIS Center Fee	1	Each	\$500	\$500.00
EDR Report	1	Each	\$1,500	\$1,500.00
Mailings (Postage)	500	Each	\$1	\$500.00
Newspaper (legal ad)	1	Each	\$1,200	\$1,200.00
Notices	1	Total	\$3,500	\$3,500.00
<b>Total Other Direct Costs (ODCs)</b>				<b>\$9,786.50</b>

Wilson & Co.					
ICR 167.84%, Fee 9.00%, 3% Increase/Year					
CLASSIFICATION TITLES		FY 1 (ends 12/31/19)	FY 2 (begins 1/1/20)	FY 3 (begins 1/1/21)	
Sr. Railroad Engineer		\$301.78	\$310.84	\$320.16	
Sr. Designer III		\$135.93	\$140.01	\$144.21	
Project Designer		\$191.28	\$197.02	\$202.93	
Admin		\$75.91	\$78.18	\$80.53	
Other Direct Costs					
Description of Item		Quantity	Unit	Unit Cost	Total
Mileage		500	Miles	\$0.58	\$290.00
Parking		5	Total	\$10	\$50.00
Outside Printing		500	Each	\$1	\$500.00
Courier ("FedEx")		10	Each	\$50	\$500.00
Total Other Direct Costs (ODCs)					\$1,340.00

Cabrina Hearn & Associates				
ICR 157.26%, Fee 8.735%, 3% Increase/Year				
CLASSIFICATION TITLES	FY 1 (ends 12/31/19)	FY 2 (begins 1/1/20)	FY 3 (begins 1/1/21)	
Survey Manager	\$173.69	\$178.90	\$184.26	
Survey Party Chief	\$155.08	\$159.74	\$164.53	
Surveyor	\$133.32	\$137.32	\$141.44	
Technician	\$131.70	\$135.65	\$139.72	
Admin	\$134.27	\$138.30	\$142.45	
Other Direct Costs				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage	1000	Miles	\$0.58	\$580.00
Total Other Direct Costs (ODCs)				\$580.00

\*COUNTY will not pay A-E more than the listed amount for Sub-Contractor work, regardless of any agreement between the A-E and their Sub-Contractor. Sub-Contractor rates are listed for convenience only.

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

**A. Total CONTRACT Amount Shall Not Exceed: \$1,069,786.78**

- II. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this CONTRACT. All price decreases will automatically be extended to COUNTY.
- III. 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.
- IV. 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.
- V. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the COUNTY Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by COUNTY:
- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the COUNTY Project Manager.
  - 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the COUNTY Project Manager.
  - 3) Other actual costs and/or payments specifically approved and authorized in writing by the COUNTY Project Manager and actually incurred by A-E in performance of this Contract.
  - 4) Travel costs shall only be reimbursed if approved in advance in writing by COUNTY Project Manager and are subject to the following restrictions:
    - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this CONTRACT shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and COUNTY location, as well as mileage within COUNTY property will not be reimbursed.
  - 5) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
  - 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

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

**VI. 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.

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

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

Invoices and support documentation are to be forwarded to:

OC Public Works  
Attn: Tim Nguyen  
601 N. Ross St, 3<sup>rd</sup> Floor  
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 PLAN1. A-E KEY PERSONNEL

Name	Classification/Designation	Years of Experience	Licenses/Certifications (include license number)
Bruce Schmith	Project Manager	35 [1 w/firm]	PE, CA: C65551; ENV SP
Sarmad Farjo	Design Manager	29 [6 w/firm]	PE, CA: C80769; ENV SP
James Zadian	Quality Control/Constructability Review	31 [1 w/firm]	PE, CA: C051957
Brandon Willnecker	Civil Lead	22 [1 w/firm]	PE, CA: C68681; QSD/QSP
Ayman Salama	Structural Lead	30 [6 w/firm]	PE, CA: C56085; PhD
Betsy Lindsay	Environmental Lead	36 [25 w/firm]	MURP; ENV SP
Don Sepulveda	Railroad/CPUC Coordination	24 [1 w/firm]	PE, CA: C58225
Craig Camp	RR Undercrossings/Jacking Design	38 [2 w/firm]	EIT
Lindsey Van Parys	Active Transportation Lead	11 [7 w/firm]	PE, CA: C79989; QSD/QSP
Andre Issa	Senior Structural Engineer	13 [5 w/firm]	PE, CA: C77609

**\*Please include classifications listed above in your proposal, in addition to other common classifications/designations which may also be needed under this CONTRACT.**

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

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

**2. SUBCONTRACTOR(S) (IF APPLICABLE)**


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

<b>Company Name &amp; Address</b>	<b>Contact Name and Telephone Number</b>	<b>Project Function</b>
<b>UltraSystems Environmental Inc.</b> 16434 Scientific Way Irvine, CA 92618-7334	Betsy Lindsay; 949.788.4900	Environmental
<b>Cabrinha, Hearn &amp; Associates:</b> 3814 E. Colorado Ave. #101 Pasadena, CA 91107	Clyde Cabrinha; 626.826.4055	Survey
<b>Transystems:</b> 6 Hutton Centre Drive Suite 1250 Santa Ana, CA 92707	Ayman Salama; 714.708.6871	Structural/Bridges & Walls
<b>Wilson &amp; Company:</b> 625 E. Carnegie Drive, Suite 100 San Bernardino, CA 92407	Don Sepulveda; 909.806.8000	Railroad & CPUC Coordination & Approval

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## EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: County of Orange OC Public Works 2. Contract DBE Goal: 17%  
 3. Project Description: AE Environmental Services for OC Loop Segment O, P and Q  
 4. Project Location: County of Orange  
 5. Consultant's Name: GHD Inc. 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: 1,069,786.78  
 8. Total Dollar Amount for ALL Subconsultants: 482,120.65 9. Total Number of ALL Subconsultants: 4

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
UltraSystems Environmental Inc. (Environmental Planning and Permitting)	25485	Betsy Lindsay, 16434 Scientific Way, Irvine CA 92618. Ph: 949 788 4900	99,530.57
Cabrinha, Hearn & Associates (Land Surveying and Mapping)	21761	Clyde Cabrinha, 3814 E. Colorado Ave, Pasadena CA 91107. Ph: 626 7956926	82,704.36
<b>Local Agency to Complete this Section</b>			\$ 182,234.9
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			17%
23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  15. Preparer's Signature _____ Sarmad Farjo 17. Preparer's Name _____ Principal/VP 19. Preparer's Title _____ 16. Date _____ 11/04/2019 18. Phone _____ 949.585.5238

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.



