

CONTRACT

THIS CONTRACT, hereinafter referred to as “Contract” for purposes of identification hereby numbered MA-080-23011408, by and between the County of Orange, a political subdivision of the State of California, Orange County Flood Control District, a body corporate and politic, hereinafter collectively referred to as “County,” and *Ninyo & Moore Geotechnical and Environmental Sciences Consultants*, a state of California Corporation, hereinafter referred to as “A-E” or “Contractor,” 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-080-23011408 Scope of Work for Qualified Vendor List for Geotechnical & Materials Testing Services hereinafter referred to as “Attachment A,”; 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 *Ninyo & Moore Geotechnical and Environmental Sciences Consultants* 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 of 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, attached hereto and incorporated herein by reference. If in the event Attachment A shall be in conflict with any provision of this Contract, the wording as set forth in Attachment A shall prevail.
- b. A-E shall be responsible for submitting all Projects/Services to County in a form which has been thoroughly reviewed and checked for completeness, accuracy and consistency

by the registered professional named in Section 1.1.2 herein; and, any Projects/Services not meeting this requirement will be returned to A-E prior to review by County.

1.2.2. Design Criteria and Standards

All Projects/Services shall be performed in accordance with instructions, criteria and standards set forth by the Director.

1.2.3. Scheduling

- a) Concurrently with the work of the Contract, A-E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from County, A-E shall submit to County two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of Projects/Services assignments. A-E schedule shall include required County review period(s) set forth herein. An approved copy of the progress schedule will be returned to A-E.
- b) A-E shall allow at least five (5) working days for County review of progress work schedule. In planning work, A-E should anticipate and allow ten (10) working days for County review of each submittal required in Attachment A.
- c) A-E shall meet on an as-needed basis as determined by 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.

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.

Amendment No. 1

Amend Term and
Maximum
Compensation

Term and Maximum Compensation

~~The term of this aggregate Contract is for three (3) years commencing upon execution of all necessary signatures or upon Board of Supervisors approval, whichever occurs later, with a MAXIMUM ANNUAL ALLOWABLE COMPENSATION OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) AND A MAXIMUM CUMULATIVE ALLOWABLE COMPENSATION OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000), except as permitted in Paragraph 1.5 below. The Parties have the option to renew for up to two (2) additional years with Board of Supervisors approval.~~

The term of this aggregate Contract is for three (3) years commencing upon execution of all necessary signatures or upon Board of Supervisors approval, whichever occurs later, with a maximum cumulative allowable compensation of one million two hundred thousand dollars (\$1,200,000), except as permitted in Paragraph 1.5 below. The Parties have the option to renew for up to two (2) additional years with Board of Supervisors approval.

1.5. A-E Compensation and Extra Work

1.5.1. For the Projects/Services authorized under this Contract, A-E shall be compensated in accordance with the following:

1.5.2. For completion and approval of all Projects/Services where “Extra Work” (defined as changes in approved portions of the Project/Services required by and ordered in writing by Director which changes constitute a change in or departure from said approved portions of Projects/Services) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as “Attachment B”, attached hereto and incorporated herein by reference.

1.5.3. Where Extra Work is authorized for Projects/Services:

- a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by Director. If this Contract is not approved by the Board of Supervisors, any change that increases the cumulative Contract price beyond \$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 section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.
- 2.2.2** A-E acknowledges that a violation of this provision shall subject A-E to penalties pursuant to Section 1741 of the California Labor Code.

2.3 Employee Eligibility Verification

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 Insurance Requirements and Endorsements

3.1.1 Prior to the provision of services under this Contract, the A-E agrees to carry 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.

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 (SIR)’s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County’s Risk Manager, or designee. The County reserves the right to require current audited financial reports from A-E. If A-E is self-insured, A-E will indemnify the County for any and all claims resulting or arising from A-E’s services in accordance with the indemnity provision stated in this Contract.

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**).

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles *If driving vehicles on John Wayne Airport commercial airfield	\$1,000,000 per occurrence \$5,000,000
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
Contractor's Pollution Liability* *(Optional coverage to be required only when hazardous materials are involved. If required, A-E will be notified by County).	\$1,000,000 per claims made or occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

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 20 26 04 13 or a form at least as broad naming the ***County of Orange, Orange County Flood Control District, and their 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 and Orange County Flood Control District shall be excess and non-contributing.
2. The Contractor's Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- a. An Additional Insured endorsement naming the **County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents** as Additional Insureds.
 - b. A primary non-contributing endorsement evidencing that A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange and Orange County Flood Control District shall be excess and non-contributing.
 - c. Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, A-E, including the transportation of hazardous waste, hazardous materials, or contaminants.
3. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against **the County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents**, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
 4. All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, Orange County Flood Control District, and their elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
 5. 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.
 6. If A-E's Professional Liability and/or Contractor's Pollution Liability policy(ies) is/are a claims-made policy, A-E shall agree to the following:
 - a. The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.
 - b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.
 7. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, A-E must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.
 8. The Commercial General Liability policy shall contain a severability of interest's clause (standard in the ISO CG 001 policy).
 9. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

10. 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.
11. 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.
12. 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.
13. 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

4.1 Indemnification

4.1.1 A-E shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County of Orange, Orange County Flood Control District and their agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E, County, or any combination of Parties 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.

4.1.2 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.

4.1.3 A-E agrees to, indemnify, defend with counsel approved in writing by County, and hold County of Orange, Orange County Flood Control District and their elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and County by a court of competent jurisdiction because of the concurrent active negligence of A-E and County of Orange, Orange County Flood Control District or County Indemnitees, A-E and County agree that liability will be apportioned as determined by the court. No 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.

4.2 Bills and Liens

4.2.1 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 of Orange, Orange County Flood Control District, and County Indemnites harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.**

4.3 Compliance with Laws

4.3.1 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 of Orange or Orange County Flood Control District 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.

4.3.2 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 of Orange, Orange County Flood Control District and County Indemnites 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

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 Orderly Termination:** Upon termination of this Contract for any reason, each Party shall assist the other Party in transferring all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party, including all data and any unfinished, preliminary or draft documents. Each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of performance of 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

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

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

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

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

This Contract contains the entire agreement between the parties with respect to the matters provided for herein.

6.6 Severability

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

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.

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, SOQs, 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 A-E, at County's direction and upon County's request, shall transmit and convey to County all such data described in Section 6.10.1 above, in native format and regardless of whether such data constitutes a draft, preliminary, or final document within three (3) business days. Failure by A-E to promptly comply with such direction and request by County shall constitute a material breach of A-E's responsibilities under this Contract

6.10.3 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 spokesperson 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: ~~Ninyo & Moore Geotechnical and Environmental Sciences Consultants~~
~~Attn: Michael Putt, PG, CEG~~
~~5710 Ruffin Road,~~
~~San Diego, CA 92123~~
~~Phone: 949-753-7070~~
~~E-mail: MPutt@NinyoMoore.com~~

~~For COUNTY: OC Public Works / OC Construction~~

~~Attn: Vinh Tran
601 N. Ross St.,
Santa Ana, CA 92701
Phone: (714) 955-0210
E-mail: Vinh.Tran@ocpw.ocgov.com~~

~~cc: OC Public Works Procurement Services~~

~~601 N. Ross St.,
Santa Ana, CA 92701
Attn: Albert Rodriguez
Phone: 714-667-9662
E-mail: Albert.Rodriguez@ocpw.ocgov.com~~

For A-E: Ninyo & Moore Geotechnical and Environmental Sciences Consultants

Attn: Michael Putt, PG, CEG
5710 Ruffin Road,
San Diego, CA 92123
Phone: 949-753-7070
E-mail: MPutt@NinyoMoore.com

For COUNTY: OC Public Works/Infrastructure Programs

Attn: Melissa Pasa
601 N. Ross Street
Santa Ana, CA 92701
Phone: (714) 647-3977
E-mail: melissa.pasa@ocpw.ocgov.com

cc: OC Public Works Procurement Services

601 N. Ross Street
Santa Ana, CA 92701
Attn: Daisy Corona
Phone: 714-667-9643
E-mail: Daisy.Corona@ocpw.ocgov.com

Amendment No. 1
Amend Contract Notices

6.15 Attorney's Fees

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

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

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

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

A-E shall make no changes in the work or perform any additional work without the County's specific written approval.

6.20 Assignment

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

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

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

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

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

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

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 4.1 “Indemnification”, A-E shall indemnify and hold harmless County for any and all claims for damages resulting from A-E’s violation of this Section.

6.29 Usage

No guarantee is given to A-E regarding usage of this Contract. The A-E agrees to supply services

requested, as needed, at prices listed in the Contract, regardless of quantity requested.

6.30 Cooperative Agreement

6.30.1 The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. A-E shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange, Orange County Flood Control District, and County Indemnites from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The A-E is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

6.30.2 The A-E shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

6.31 Wage Rates

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. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

6.32 Apprenticeship Requirements

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.

6.33 Registration of Contractor

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.

6.34 Payroll Records

6.34.1 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.

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

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.

6.34.3 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 Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

6.34.4 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.

6.34.5 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.

6.34.6 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.

6.34.7 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. 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.

6.35 Work Hour Penalty

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.

6.36 Apprentices

6.36.1 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.

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.

6.36.2 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.

6.36.3 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.

6.37 Safety

A-E shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("Contractor Safety Responsibilities") and submit a copy of its Injury and Illness Prevention Program (IIPP) and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. A-E will notify County Project Manager of any revisions to the Safety Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). A-E shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.

6.38 Levine Act

A-E agrees to comply with Government Code Section 84308. A-E further agrees to disclose to the County any contribution made to any members of the Board of Supervisors or County Agency Officers by A-E, A-E's agent or lobbyist, or, if applicable, any subcontractor(s) for the twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

7. FEDERAL REQUIREMENTS.

A. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. The above provision binds the D-BE and subcontractors from the bid solicitation period through the completion of the contract.

7.1 Compliance with Non-Discrimination Requirements: During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this Contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or

- b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
 7. **Title VI List of Pertinent Nondiscrimination Acts and Authorities** During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - b. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - f. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - g. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- i. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

7.2 CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

7.3 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

8. AIRPORT REQUIREMENTS: AIRPORT SECURITY AND ID BADGE REQUIREMENTS

Contractor, Contractor’s employees, and Contractor’s subcontractors must complete the following in order to obtain an Airport-Issued Security Identification Badge (ID Badge).

- A. Airport-Issued Badge Acquisition, Retention, and Termination:** Prior to issuance of airport security ID Badge(s), designated Contractor personnel who shall be working on-site in JWA restricted areas and engaged in the performance of work under this Contract must pass JWA’s security screening requirements, which include fingerprinting to complete an F.B.I. Criminal History Records Check (CHRC) and a Security Threat Assessment (STA). Contractor should anticipate four to six weeks for new employees to receive an airport security ID badge which includes the following general steps:
 1. Company designates at least two representatives as Authorized Signatories by submitting a

letter on company letterhead using the airport's template.

2. Subcontractors and tenant contractors must also have two Authorized Signatories at a minimum.
3. All company employees requiring unescorted access to restricted airport areas are scheduled for fingerprint appointments.
4. Background check fees are provided at the first appointment
5. Employees must provide two government-issued IDs at the first appointment.
6. STA and/or CHRC results are received.
7. All ID Badge applicants successfully passing the STA and/or CHRC are scheduled for required training.
8. ID Badge related fees are provided, and any additional information requested is provided at the training appointment.
9. Upon successful completion of the required training, employees will receive their ID Badge.
10. Authorized Signatories are required to maintain the ID Badge process for the onboarding of future employees, employee ID Badge renewals, scheduling, and other actions detailed below.
11. Contractor's designated personnel must, at a minimum, complete the following required training based on contractors work to be provided and access areas:
 - a. Authorized Signatory Training: All organizations must designate at least two Authorized Signatories by providing a letter on company letterhead using the ID/Access Control Office template. The designated Authorized Signatories will be responsible for the entire ID Badge process for their organization including, but not limited to, the onboarding of new employees, renewing employees, scheduling employees for appointments, payment coordination, ID Badge audits, resolution to safety/security violations caused by the organization's employees, subtenants, or subcontractors. Authorized Signatories must attend this approximate one (1) hour course initially and annually
 - b. Security Identification Display Area (SIDA) Training: All employees with an operational need to have unescorted access to the Airport SIDA must complete this approximate one and one half (1.5) hour course and pass a written test.
 - c. Sterile Area (Elevator) Training: All Non-SIDA employees with an operational need to have unescorted access to the Sterile Area of the terminal must complete an approximate 30-minute training session and pass a written test.
 - d. Non-Movement Area or Movement Area Driver Training: All employees with an operational need to drive on airfield service roads and/or ramps must attend the approximate one (1) hour Non- Movement Area Driver course and pass a written test. Employees with an operational need to drive on active taxiways and/or active runways must coordinate this training with the Airport Operations Division.
 - e. Contractors' designated personnel must successfully complete the badge acquisition within six weeks of Contract execution, unless other arrangements have been coordinated by County Project Manager or designee in writing.
 - f. All personnel assigned to this contract must be in possession of a current, valid Airport-Issued ID Badge prior to fulfilling an independent shift assignment.
 - g. Contractor is responsible for terminating and retrieving Airport-Issued ID Badges as soon as an employee no longer needs unescorted access to airport restricted areas. Terminated ID Badges must be returned to the ID/Access Control office within three business days. Failure to do so will result in a \$250.00 fee.
 - h. Contractor shall be responsible for all cost associated with the Airport-Issued ID Badge

process. The ID/Access Control Office maintains the current list of fees. Below is a list of estimated costs for new ID Badge applications and ID Badge renewals:

- i. STA Fee: Approximately \$11.00
 - ii. Fingerprint/CHRC Fee: Approximately \$31.00
 - iii. ID Badge Fee: Approximately \$10.00
 - iv. Terminated, Unreturned ID Badge Fee: Approximately \$250.00
- i. Contractor shall abide by all the security requirements set forth by the Transportation Security Agency (TSA) and JWA.

B. Airport Driving Endorsement: In addition to obtaining a JWA access control badge, Contractor's service staff with an operational need to drive on airport service roads and ramps must also take an Airport provided training course and pass a test to acquire an airfield driving endorsement.

Some Air Operations Area projects will require vehicles to be equipped with visible company placards on both sides of the vehicle, an orange/white checkered flag, an amber, rotating beacon, and a two-way radio to monitor FAA Air Traffic Control Tower frequencies; or be escorted by a vehicle with this equipment and markings. Only vehicles, equipment, and personnel who have prior authorization by the ASP may operate on runways, taxiways and movement areas, or cross runways and taxiways. Under no circumstance shall any vehicle operate on or cross a runway, taxiway, or any movement area unless permission from the Tower is granted. Vehicles requiring an escort must be escorted by Airport Operations, or authorized company vehicles, equipped with two-way radios, and in constant radio communication with the FAA Tower Control.

C. Airport ID Badge Holder Requirements and Responsibilities: TSA approved security program for JWA requires that each person issued a JWA security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of JWA.

1. All persons within the restricted air operation areas of JWA are required to display, on their person, a JWA security badge; unless they are specifically exempted for safety reasons, or they are under escort by a properly badged individual. Each JWA employee, JWA Contractor, subcontractor or tenant employee who has been issued a JWA security badge is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid JWA security badge must immediately be referred to the Sheriff's Department - Airport Police Services Office for proper handling.
2. JWA security badge is the property of County and must be returned upon termination of Contractor personnel employment and/or termination, expiration or completion of Contract. The loss of a badge shall be reported within 24 hours to the Sheriff's Department - Airport Police Services by calling (949) 252-5000. Individuals that lose their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement shall be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge shall be issued.
3. JWA security badge is nontransferable.
4. In the event that a contractor's badge is not returned to JWA upon termination of Contractor personnel employment and/or termination or expiration of Contract, a fine of \$250.00 per badge shall be charged to Contractor. Contractor's final payment may be held by County or a deduction from contractor's payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.

5. Contractor shall submit the names, addresses, and driver's license numbers for all Contractor personnel who shall be engaged in work under this Contract to County Project Manager within seven days after award of the Contract or within seven days after the start of any new Contractor personnel and/or prior to the start of any work.
6. No worker shall be used in performance of this work that has not passed the background check.

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

NINYO & MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS,
a state of California Corporation,

Date: _____

By: _____
Signature

Print Name & Title

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

Date: _____

By: _____
Signature

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; and,
ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

Date: _____

By: _____

Print
Name: _____

Title: _____

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: _____

Deputy

Print Name: _____

ATTACHMENT A: SCOPE OF WORK

I. INTRODUCTION

Amendment No. 1
Attachment A:
Scope of Work,
Section I:
Introduction

~~OC Public Works, on behalf of the County of Orange (County) and Orange County Flood Control District (District), requires supplemental professional services to meet workload demands and project scheduling commitments in relation to Architect/Engineer (A-E) Design, Project Administration and Management Services for various projects. A-E is defined as an Architect or Engineer for design and/or engineering of a project. To supplement existing resources, County intends to issue "On-Call Geotechnical & Materials Testing Services" for use by Orange County on an "as-needed" basis. No specified amount of work is guaranteed to A-E. However, the amount of negotiated contracted work that will be required on an "as-needed" basis shall not exceed (\$600,000).~~

OC Public Works, on behalf of the County of Orange (County) and Orange County Flood Control District (District), requires supplemental professional services to meet workload demands and project scheduling commitments in relation to Architect/Engineer (A-E) Design, Project Administration and Management Services for various projects. A-E is defined as an Architect or Engineer for design and/or engineering of a project. To supplement existing resources, County intends to issue "On-Call Geotechnical & Materials Testing Services" for use by Orange County on an "as-needed" basis. No specified amount of work is guaranteed to A-E. However, the amount of negotiated contracted work that will be required on an "as-needed" basis shall not exceed (\$1,200,000).

II. GENERAL DESCRIPTION OF SERVICES

The A-E will be contacted by County or District Project Management staff on an "as-needed" basis as projects arise to provide A-E for professional services. Requirements will be discussed by both Parties and A-E shall prepare a written *Scope Statement* that will include the specific work to be performed, including the costs and time required to complete the project/task. County or District Project Management staff will then review the A-E's *Scope Statement*, proceed with negotiation of task costs and when satisfied, issue a Contract Task Order (CTO) against this Contract.

The A-E shall serve as lead of a design team that may include other construction design professionals working together to ensure that the original design is carried through to the finished product, with no alterations in materials or design that would lead to safety issues or compromise the quality of the building or building component. Other team members who may be retained by the lead to support a project as a consultant may include but are not limited to landscape architects, lighting designers, data consultants, security consultants, controls engineers, commissioning consultants, traffic engineers, surveyors, estimators, special inspection, etc.

The A-E shall be responsible for the preparation of comprehensive building assessments, designs, drawings, specifications, cost estimates, and reports within the scope of the Contract Task Order (CTO). In the preparation of construction drawings and specification, the A-E shall also responsible for:

- A. Obtaining data by reviewing record drawings, visiting the site of the construction and by conferences with the User/Client and facility maintenance staff or by other actions as necessary to develop the design;
- B. Checking of shop drawings, submittals, materials and other data submitted by the Construction Contractor for approval;
- C. Furnishing consultation and advice to County to clarify the intent of the drawings and specifications and on questions that may arise during the construction of the project;
- D. Space planning, programming and code compliance review and upgrades;

- E. The meeting of submittal dates included in the *Scope Statement* of the Contract Task Order, including the work of consultants;
- F. Coordination with various agencies having authority of jurisdiction for planning services, entitlement, fire life safety, CEQA, ADA, etc.;
- G. Construction administration services, testing and commissioning;
- H. Close out services, as-built plans, material lists, project acceptance, etc.
- I. The coordination of the various elements of the design to assure compatibility of architectural, structural, electrical, mechanical/plumbing, and other design features;
- J. Other services as specifically included in the Contract Task Order related to project Initiation, Planning/Design, Bid/Award, Construction and Closeout.

The A-E shall restrict themselves to the *Scope Statement* of the Contract Task Order. Any changes in the *Scope Statement* shall require prior written authorization by County.

III. CONTRACT TASK ORDER

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

A CTO requiring A-E to be on the premises of John Wayne Airport will require A-E to comply with the Airport Security and ID Badge Requirements, incorporated to the Contract as Attachment D.

The CTO shall include a detailed *Scope Statement*, describing tasks to be performed with a specific list of deliverables for each task, schedule of work and cost to complete the work. The schedule of work shall allow enough time for meetings with County or District Management staff to review the work progress, provide technical and policy direction, resolve problems and ensure adherence to the work completion schedule. The CTO shall include a cover sheet provided by County or District Project Management staff with the appropriate signature blocks and contract information. Once both Parties agree, and all Parties have signed the CTO, County or District Management staff shall provide A-E with a Notice to Proceed (NTP) to begin work. A-E shall submit all plans, reports and other documents produced under the CTO to the assigned County or District Project Manager within the timeframe indicated in the CTO or as directed by County or District Project Management staff.

IV. SCOPE OF WORK – QUALIFIED VENDOR LIST FOR ON-CALL GEOTECHNICAL & MATERIALS TESTING SERVICES

A. CONSTRUCTION SERVICES

Personnel Requirements:

A-E will be required to provide Resident Engineers, licensed civil engineer in the State of California, Construction Inspectors and part-time Project Schedulers as required by the scope of each Task Order. The A-E shall provide the necessary personnel, inspection staff, equipment and transportation to facilitate the performance of the intended engineering and inspection services.

Description of Services (activities shall include, but not limited to):

Consultants must have experience, knowledge, and familiarity with Public Works Construction Management Services to include **all County and District projects**, but not necessarily be limited to: Public Works Construction Inspection, Public Works Construction Management, Public Works Construction Contract Administration, and OC Waste & Recycling (Landfill) Projects.

B. GEOTECHNICAL SERVICES

The requested services consist, in general, of preparation of Geotechnical Reports to address issues relative to construction of new or rehabilitation of existing roadways, flood control channels, parks projects, or airport facilities. Certain related support services as described herein may also be requested. This General Scope of Work exemplifies the types of work that may be required including, but are not limited to, the following:

1. Life cycle costs and rehabilitation/reconstruction methods for pavements
2. Geotechnical design of various foundations and/or retaining structures
3. Embankment restoration and construction considerations
4. Settlement analysis and mitigation
5. Liquefaction evaluation and mitigation
6. In-situ ground improvements and monitoring
7. Dewatering and settlement monitoring
8. Slope stabilization and landslide mapping
9. Grading observation and related testing
10. Soil erosion and sedimentation control and infiltration testing
11. Other design criteria as deemed necessary

C. Research

1. The A-E, as required, shall review existing topographic maps and/or all past pavement, soil and engineering geology investigations. The geotechnical report will discuss past findings as they impact the subject project. County, as applicable, will provide any readily available topographic or other type of base map for A/E use in mapping geologic units and other features, plotting boring and test pits, and showing the traces of cross-sections. If an adequate base map is not readily available, it will be the responsibility of the A-E to research and/or develop the base map.

D. Technical Knowledge

1. The A-E shall have knowledge of and be responsible for complying with County's Standard Plans, Greenbook Specifications, and Caltrans Standards.

E. Site Inspection

1. The A-E shall visit the project site to identify and evaluate existing field conditions.

F. Utilities Coordination

1. If field investigation requires any subsurface exploration (digging, boring, and/or drilling), A-E shall provide utility notice coordination with the utility companies through Underground Service Alert (USA) prior to A-E beginning any field works. A-E shall make every effort to aid County and provide all necessary documentation in accordance with Government Code Sections 4216 et seq. Surveying by A-E shall conform to the quality and practice required by the County.

G. Entry Permits

1. Any right of entry requirements or permits necessary to perform field investigation work shall be the responsibility of the A-E.

H. Field Investigations

1. Any field data collection as deemed necessary and identified in the County or District approved Scope of Work will be performed by the A-E in accordance with standard procedures. Field investigations might include, but not be limited to the following:
 - a. Bucket auger borings
 - b. Hollow stem auger (or other) borings
 - c. Test pits
 - d. Pavement coring
 - e. Engineering geologic mapping
 - f. Down hole logging
2. Locations of all tests shall be plotted on a base map. Logs of all test locations shall be provided. The logs shall be based on observations, measurements, and descriptions of the soil and bedrock composition and structure.

I. Construction Monitoring

1. Construction monitoring related to earthwork, in-situ ground improvements, and foundations may be required for specific projects.

J. Laboratory Testing

1. Any laboratory testing necessary to conduct soils surface and subsurface characterization applicable to the needs of the project which are identified in the County or District approved Scope of Work or as otherwise approved by the County or District, will be performed by the A-E in accordance with County of Orange Standards and Procedures using California Test Methods (CTM) and/or American Society for Testing and Materials (ASTM) standards. Caltrans certified technicians and Caltrans laboratory certification may be required to satisfy the needs of the investigation and/or construction monitoring for all projects.
2. All test results shall be provided as an attachment to the report.

K. Meetings

1. To ensure proper project development, A-E may be required to attend and conduct status meetings with staff and others to discuss status and/or details of the project. All anticipated meetings should be identified in the Scope of Work. Unanticipated meetings will be considered extra work.

L. Evaluations and Recommendations

1. The report shall develop and evaluate conceptual recommendations based on existing and ultimate conditions, test results, geotechnical calculations, and preliminary cost estimates. All geotechnical issues and concepts shall be discussed including, but not necessarily limited to issues affecting construction phasing, prioritization, and schedule.

The most practical, feasible, and cost-effective solution shall be recommended with justifications supporting the recommendation.

M. Specifications

1. A-E shall be required to include geotechnical specifications for construction as a part of the report when identified and approved by County or District as part of the Scope of Work.

N. Draft Report

1. A-E shall complete a Draft Report for the specific project and submit four (4) copies to County for review. The Draft Report shall include all exhibits and attachments and shall be signed by the responsible professional who worked on the project.
2. The Draft Report might be expected to include, but not be limited to the following items. Those items that will be required for all reports are shown in ***bold italic*** type.
 - a. Table of Contents
 - b. Introduction, Purpose, and Scope of Work
 - c. Site Description
 - d. Methods of Field Investigation (surface and subsurface)
 - e. Methods of Lab Testing of Samples
 - f. Test Results
 - g. Site Geology (Bedrock and soil units, geologic structures, landslides, etc.)
 - h. Groundwater
 - i. Slope Stability Analysis
 - j. Conclusions
 - i. Concluding statement with reference to purpose of investigation and report
 - ii. Unanticipated conditions encountered
 - iii. Deviations from the plan (if any plan exists)
 - iv. Bedrock excavating conditions and rip ability
 - v. Gross stability: Steepest cut slopes possible with a safety factor equal to or greater than 1:1 for a pseudo static condition.
 - vi. Surficial stability and erodibility of cut slopes and fill slopes
 - vii. Soil units
 - a. Classification
 - b. Moisture content
 - c. Sulfate content
 - d. Shrinkage of excavated soil
 - e. Stability of temporary cut slopes
 - f. Compressibility and potential for settlement or consolidation due to fill placement
 - g. Potential for expansion or collapse

- h. Sand equivalence
- i. Dry densities
- j. Shear strengths (ϕ and c)
- viii. Seismicity
 - k. Regional
 - l. Local earthquake effects
 - m. Ground rupture potential
 - n. Liquefaction potential
 - o. Lateral spreading potential
 - p. Potential for ground lurching
 - q. Potential for Tsunami
 - r. Potential for seiche
 - s. Seismically included land sliding or rockfall

O. RECOMMENDATIONS

1. Methods of excavation by equipment and/or blasting
2. Slope ration (H:V) and maximum height of temporary cut slopes during construction
3. Stabilization of interim cut slopes (if necessary)
4. Slope ratio (H:V) and maximum height of temporary cut slopes during construction
5. Shoring load, slope gradients, and stabilization of temporary cut slopes
6. Slope ratio (H:V) and maximum height of fill slopes
7. Key and bench recommendations for constructing fill slopes
8. Terrace drains and down drains
9. Removal of unsuitable material
10. Disposal of oversized material
11. Preparation of natural ground to receive fill
12. Suitability of native soils for use as backfill
13. Relative compaction of engineered fill and natural subgrade
14. Subdrains
15. Engineering and geologic inspections during construction for competence of materials, stability of cut slopes and safety
16. Construction considerations
17. Buttress fills or stabilization fills

18. Drainage and erosion control during construction
19. Foundation recommendations

P. ILLUSTRATIONS

1. Project location map
2. Regional fault and seismicity map
3. Geotechnical map showing
 - a. Existing topography and existing structural features
 - b. Proposed design
 - c. Distribution and explanation of geological map units (soil and Bedrock units, geologic structures, and landslides)
 - d. Locations of test-pits and borings
 - e. Trace of geotechnical cross-sections
4. Geotechnical cross-sections
5. Boring logs and test-pit logs
6. Summary table of major cut slopes and fill slopes
 - a. Slope numbers
 - b. Cross-section reference
 - c. Slope height and slope ratio (H:V)
 - d. Slope type and direction faced by slope
 - e. Geologic condition
 - f. Remarks
 - g. References

Q. AUTHENTICATION

1. *Original ink signatures of the responsible civil engineer and/or the geotechnical engineer and the engineering geologist who worked on the project*
2. **Soil Boring Permit Requirements**
 - a. All contracted work requiring permits, must comply with the County of Orange Health Care Agency Environmental Health Division regulations and/or County Property Permits regulations. The A-E will be responsible for preparing all permit application documents and obtaining permits.
3. John Wayne Airport Requirements

Additionally, CTOs related to John Wayne Airport require special knowledge of Federal Aviation Administration (FAA) Advisory Circulars (AC):
FAA AC 150/5300-13 Airport Design
FAA AC 150/5320-6 Airport Pavement Design and Evaluation
FAA AC 150/5370-10 Standards Specifying Construction of Airports

FAA AC 150/5335-5 Standardized Method of Reporting Airport Pavement Strength-PCR
FAA AC 150/5320-5 Airport Drainage Design
FAA AC 150/5380-6 Guidelines and Procedures for Maintenance of Airport Pavements
FAA AC 150/5370-11 Use of Nondestructive Testing in the Evaluation of Airport Pavements
FAA AC 150/5380-7 Airport Pavement Management Program
FAA AC 150/5370-2 Operational Safety on Airports During Construction
etc.

It is required that the A-E Testing & Inspection Firm have expert knowledge of the American Standard Testing Method (ASTM) and other regulatory agency requirements. Further, the contract will require that the A-E Testing and Inspection Firm have the ability to function proficiently in and around airport facilities, as the prescribed services will take place within a busy and restricted operating environment.

Geophysical testing to delineate the presence of underground utilities

R. MATERIALS TESTING

The requested services consist, in general, of materials testing to assure compliance with contract specifications for construction of new or rehabilitation of existing roadways, flood control channels, parks, or other infrastructure projects. Certain related support services as described herein may also be requested. This General Scope of Work contains the types of work that may be required including, but not limited to, the following:

1. Scope of Work

- a. The requested services consist, in general, of materials testing and evaluation in support of the County's Quality Assurance (QA) program to determine the suitability of materials used for the construction or rehabilitation of existing roadways, bridges, retaining walls, flood control channels and other projects. The following is the typical testing that may be required, but not limited to:
 - i. Portland Cement Concrete sampling and testing
 - ii. Steel/rebar weld and splice testing and inspection
 - iii. Asphalt concrete testing and evaluation
 - iv. Cast In-Place Drilled Hole (CIDH) pile testing and inspection
 - v. In-situ ground improvement testing and inspection
 - vi. Construction rock materials testing
 - vii. Subgrade, base and asphalt compaction testing and grading inspection
 - viii. Concrete coring, asphalt concrete forensic investigation and related testing
 - ix. Review of PCC and asphalt concrete mix designs submitted by the contractor
 - x. Other specialized testing, including profilograph and skid testing, as deemed necessary
- b. Materials testing in the field and/or laboratory will be performed as directed by the County Materials Engineer or his/her delegated representative. Testing will be performed in accordance with County Standards and Procedures using California Test Methods (CTM), American Society for Testing and Materials (ASTM) and/or

American Association of State Highway and Transportation Officials (AASHTO) testing. A-E shall be responsible for complying with County of Orange Standard Plans, Greenbook Specifications, Caltrans Standards, ASTM Standards, AASHTO Standards and APWA Standards.

- c. Caltrans technician and laboratory certifications may also be necessary to satisfy the needs of materials testing for Caltrans-funded projects. In addition, Concrete and Cement Reference Laboratory (CCRL) and/or AASHTO resource accreditation, including ASTM D3666, may be required for Federal Aviation Administration (FAA) or Federally-funded projects identified by the County.
- d. A-E shall submit test results to the County Materials Laboratory conforming to the following reporting schedule:
- e. One Working Day - Compaction and maximum density for materials sampled at the job site
- f. Two Working Days - Sieve Analysis, Sand Equivalent and Cleanness Value for aggregate that is sampled at material plants
- g. Three Working Days - Sieve Analysis, Sand Equivalent and Cleanness Value for soils and aggregates are sampled at the job site
- h. Four Working Days - "R" Value and asphalt concrete extraction
- i. When sampling products such as Portland cement concrete (PCC), cement-treated base (CTB), hot mix asphalt (HMA), and other such materials, the time of sampling shall be varied as much as possible in order to avoid a predictable sampling routine.
- j. Test results shall be signed and stamped by the responsible civil engineer, geotechnical engineer, and/or engineering geologist who worked on the project.
- k. The A-E must follow and comply with all applicable requirements of the California Construction and General Industry Safety Orders, the California Occupational Safety and Health Act (Cal-OSHA), County of Orange's Safety and Loss Prevention Program and all applicable laws and regulations.
- l. The County requirements of a private laboratory to perform testing within the jurisdiction of the County are:
 - i. California Test Methods shall be used for both field and laboratory testing (unless other testing procedures are approved by the County Materials Engineer and listed on the project plans or in the project's provisions).
 - ii. Field testing procedures are observed and found to be satisfactory by the County Independent Assurance Testing (IAT) staff.
 - iii. Laboratory testing procedures are observed (if necessary) and found to be satisfactory by the IAT staff.
 - iv. Laboratory testing equipment and field testing equipment has been calibrated within the last year and is found to be in good working condition.

2. Independent Assurance Testing

County Materials Laboratory may perform occasional Independent Assurance Testing to evaluate the A-E's adherence to required specifications, standards, and procedures both in the field and at the A-E's laboratory facility. Should A-E not be performing in accordance with those criteria or other criteria that may be established, their work will not be accepted or compensated; and, depending on the frequency and/or severity of the deficiency, services may be terminated by County.

ATTACHMENT B: COST/COMPENSATION

I. COMPENSATION: This is a **time and materials** usage Contract between County and A-E for Qualified Vendor List for On-Call Geotechnical & Materials Testing Services 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 amount specified in Article 1.4 of the Contract unless authorized by amendment in accordance with Paragraphs 6.3 and 6.19 of the 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:

A. Classification Rates:

NINYO & MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS			
<u>CLASSIFICATION TITLES</u>	<u>Regular Hourly Rate^a</u>	<u>1.5x^b</u>	<u>2.0x^c</u>
Principal Engineer/Geologist/Environmental Scientist	\$225	-	-
Senior Engineer/Geologist/Environmental Scientist	\$225	-	-
Senior Project Engineer/Geologist/Environmental Scientist	\$200	-	-
Project Engineer/Geologist/Environmental Scientist	\$200	-	-
Senior Staff Engineer/Geologist/Environmental Scientist	\$200	-	-
Staff Engineer/Geologist/Environmental Scientist	\$180	-	-
GIS Analyst	\$145	-	-
Technical Illustrator/CAD Operator	\$140	-	-
Certified Asbestos/Lead Technician	\$220	-	-
Data Processor	\$95	-	-
Field Operations Manager*	\$150	-	-
Supervisory Technician*	\$140	\$210	\$280
Nondestructive Examination Technician*	\$145	\$218	\$290
ACI Concrete Technician*	\$130	\$195	\$260
Concrete/Asphalt Batch Plant Inspector*	\$130	\$195	\$260
Special Inspector (Concrete, Masonry, Steel, Welding and Fireproofing)*	\$135	\$203	\$270
Senior Field/Laboratory Technician*	\$130	\$195	\$260
Field/Laboratory Technician*	\$130	\$195	\$260
Information Specialist	\$120	-	-
Geotechnical Assistant	\$120	-	-
Concrete Coring (includes Tech)*	\$190	\$285	\$380
Anchor Load Test (includes Tech)*	\$190	\$285	\$380

- a. Regular Rate - Charged during normal weekday hours (Monday through Friday 6:00 am to 5:00 pm).
- b. 1.5x - Overtime rates charged for work exceeding 8 hours in one shift and for the first 12 hours worked on Saturdays.
- c. 2.0x - Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sunday and Holidays.

<u>MATERIAL/LABORATORY TESTS</u>	
<u>SOILS</u>	<u>RATE</u>
Atterberg Limits, D 4318, CT 204	\$170
California Bearing Ratio (CBR), D 1883	\$550
Chloride and Sulfate Content, CT 417 & CT 422	\$175
Consolidation, D 2435, CT 219	\$300
Consolidation, Hydro-Collapse only, D 2435	\$150
Consolidation – Time Rate, D 2435, CT 219	\$200
Direct Shear – Remolded, D 3080	\$350
Direct Shear – Undisturbed, D 3080	\$300
Durability Index, CT 229	\$175
Expansion Index, D 4829, IBC 18-3	\$190
Expansion Potential (Method A), D 4546	\$170
Geofabric Tensile and Elongation Test, D 4632	\$200
Hydraulic Conductivity, D 5084	\$350
Hydrometer Analysis, D 6913, CT 203	\$220
Moisture Only, D 2216, CT 226	\$35
Moisture and Density, D 2937	\$45
Permeability, CH, D 2434, CT 220	\$300
pH and Resistivity, CT 643	\$175
Proctor Density D1557, D 698, CT 216, AASHTO T-180	\$220
Proctor Density with Rock Correction D 1557	\$340
R-value, D 2844, CT 301	\$375
Sand Equivalent, D 2419, CT 217	\$125
Sieve Analysis, D 6913, CT 202	\$145
Sieve Analysis, 200 Wash, D 1140, CT 202	\$100
Specific Gravity, D 854	\$125
Thermal Resistivity (ASTM 5334, IEEE 442)	\$925
Triaxial Shear, C.D, D 4767, T 297	\$550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$450
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	\$350
Triaxial Shear, U.U., D 2850	\$250
Unconfined Compression, D 2166, T 208	\$180
<u>MASONRY</u>	<u>RATE</u>
Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	\$70
Brick Compression Test, C 67	\$55
Brick Efflorescence, C 67	\$55
Brick Modulus of Rupture, C 67	\$50
Brick Moisture as received, C 67	\$45
Brick Saturation Coefficient, C 67	\$60

Concrete Block Compression Test, 8x8x16, C 140	\$70
Concrete Block Conformance Package, C 90	\$500
Concrete Block Linear Shrinkage, C 426	\$200
Concrete Block Unit Weight and Absorption, C 140	\$70
Cores, Compression or Shear Bond, CA Code	\$70
Masonry Grout, 3x3x6 prism compression, C 39	\$45
Masonry Mortar, 2x4 cylinder compression, C 109	\$35
Masonry Prism, half size, compression, C 1019	\$120
Masonry Prism, Full size, compression, C 1019	\$200
<u>REINFORCING AND STRUCTURAL STEEL</u>	<u>RATE</u>
Chemical Analysis, A 36, A 615	\$135
Fireproofing Density Test, UBC 7-6	\$90
Hardness Test, Rockwell, A 370	\$80
High Strength Bolt, Nut & Washer Conformance, per assembly A325	\$150
Mechanically Spliced Reinforcing Tensile Test, ACI	\$175
Pre-Stress Strand (7 wire), A 416	\$170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	\$90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$80
<u>CONCRETE</u>	<u>RATE</u>
Compression Tests, 6x12 Cylinder, C 39	\$35
Concrete Mix Design Review, Job Spec	\$300
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$850
Concrete Cores, Compression (excludes sampling), C 42	\$120
Drying Shrinkage, C 157	\$400
Flexural Test, C 78	\$85
Flexural Test, C 293	\$85
Flexural Test, CT 523	\$95
Guniting/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$275
Lightweight Concrete Fill, Compression, C 495	\$80
Petrographic Analysis, C 856	\$2,000
Restrained Expansion of Shrinkage Compensation	\$450
Splitting Tensile Strength, C 496	\$100
3x6 Grout, (CLSM), C 39	\$55
2x2x2 Non-Shrink Grout, C 109	\$55
<u>ASPHALT</u>	<u>RATE</u>
Air Voids, T 269	\$85
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	\$4,500
Asphalt Mix Design Review, Job Spec	\$180
Dust Proportioning, CT LP-4	\$85
Extraction, % Asphalt, including Gradation, D 2172, CT 382	\$250
Extraction, % Asphalt without Gradation, D 2172, CT 382	\$150
Film Stripping, CT 302	\$120
Hveem Stability and Unit Weight D 1560, T 246, CT 366	\$225
Marshall Stability, Flow and Unit Weight, T 245	\$240
Maximum Theoretical Unit Weight, D 2041, CT 309	\$150
Moisture Content, CT 370	\$95

Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	\$1,000
Slurry Wet Track Abrasion, D 3910	\$150
Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	\$4,900
Superpave, Gyrotory Unit Wt., T 312	\$100
Superpave, Hamburg Wheel, 20,000 passes, T 324	\$1,000
Unit Weight sample or core, D 2726, CT 308	\$100
Voids in Mineral Aggregate, (VMA) CT LP-2	\$90
Voids filled with Asphalt, (VFA) CT LP-3	\$90
Wax Density, D 1188	\$140
<u>AGGREGATES</u>	<u>RATE</u>
Clay Lumps and Friable Particles, C 142	\$180
Cleanness Value, CT 227	\$180
Crushed Particles, CT 205	\$175
Durability, Coarse or Fine, CT 229	\$205
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	\$180
Flat and Elongated Particle, D 4791	\$220
Lightweight Particles, C 123	\$180
Los Angeles Abrasion, C 131 or C 535	\$200
Material Finer than No. 200 Sieve by Washing, C 117	\$90
Organic Impurities, C 40	\$90
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	\$950
Potential Reactivity of Aggregate (Chemical Method), C 289	\$475
Sand Equivalent, T 176, CT 217	\$125
Sieve Analysis, Coarse Aggregate, T 27, C 136	\$120
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$145
Sodium Sulfate Soundness, C 88	\$450
Specific Gravity and Absorption, Coarse, C 127, CT 206	\$115
Specific Gravity and Absorption, Fine, C 128, CT 207	\$175
<u>ROOFING</u>	<u>RATE</u>
Roofing Tile Absorption, (set of 5), C 67	\$250
Roofing Tile Strength Test, (set of 5), C 67	\$250

Note: 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.

III. PRICE INCREASES/DECREASES: No price increases will be permitted during the term of this Contract. All price decreases will automatically be extended to County.

IV. FIRM DISCOUNT AND PRICING STRUCTURE: A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.

V. **A-E'S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

VI. **REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by County:

- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the County Project Manager.
- 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the County Project Manager.
- 3) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by A-E in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by County Project Manager and are subject to the following restrictions:
 - a. Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Contract shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and County 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.

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

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

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

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

- A. A-E's name and address
- B. A-E's remittance address, if different from (A), above

- C. Name of County agency/department
- D. Delivery/service address
- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

TBA – Per Task Order

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 PLAN

1. A-E KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Years with Current Firm	Licenses/ Certifications (include license number)
Michael Putt	Principal Geologist/Principal-in-Charge	27	15	GE 2508 (CA)/PE54759 (CA)
Rajindra Handapangoda	Principal Engineer/Materials Testing Discipline Manager	16	16	PE73171 (CA)/GE 2998 (CA)
Soumitra Guha	Principal Engineer-Technical Advisor/Geotechnical	31	21	GE 2632 (CA)/PE 589671 CA)
Ronald Hallum	Principal Geologist/Technical Advisor-Geology	37	28	PG 4766 (CA) CEG 1484 (CA)
Robert Bigger	Senior Project Manager/Field Operations Manager	37	17	-

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. **SUBCONSULTANT(S) (IF APPLICABLE)**

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

Corporate Name	Corporate Address	Local Office Address*	Contact Name	Telephone Number	Project Function	DVBE Certification Number	SBA Certification Number
Not Applicable at this Time							

(*If more than one local address please use a separate sheet)