MODEL CONTRACT

THIS CONTRACT, hereinafter referred to as "Contract" for purposes of identification hereby numbered ***TBD«CONTRACT_»,*** by and between the County of Orange ("County"), a political subdivision of the State of California, Orange County Flood Control District ("District"), a body corporate and politic, and Contractor's Name, a State of California Corporation ("A-E," or "Contractor"), which are sometimes individually referred to as "Party" or collectively referred to as "Parties."

RECITALS

WHEREAS, County and District require professional services to accomplish projects and/or services ("Projects/Services") as described in Contract Scope of Work for Architect-Engineer (A-E) Construction Testing and Inspection Services – Task Order Contract, hereinafter referred to as "Attachment A"; and

WHEREAS, the District relies on County staff to carry out its duties pursuant to the Orange County Flood Control District Act, Water Code App. §§ 36-1 et seq., and County staff may request A-E to perform services under this Contract on behalf of District; 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 «AE_CONTACTCERTS» 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 Contract 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.

Draft Model Contract

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 the progress work schedule. In planning work, A-E should anticipate and allow ten (10) working days for County review of each submittal required in Attachment A.

c) A-E shall meet on an as-needed basis as determined by County or at least once every four (4) weeks with County to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.

d) Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to County for concurrence.

e) A-E shall complete all the work of Projects/Services and obtain all approvals by the County within the time frame indicated in Attachment A, except A-E shall not be responsible for any delay beyond the control of A-E.

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

1.3. Assistance by County Staff

1.3.1. County shall assign an appropriate staff member to work with A-E in connection with the work of this Contract. Said staff member's duties will consist of the giving of advice and consultations, assisting A-E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A-E or County's staff warrant attention, and all other duties as may be described in Attachment A.

Draft Model Contract

1.3.2. All of the above activities, however, shall be the primary responsibility of A-E to schedule, initiate and carry through to completion.

1.4 Term and Maximum Compensation

The term of this Contract is [effective for WRITTEN OUT (X) years -OR- XX years commencing DATE through DATE], with a **maximum allowable compensation of [WRITTEN OUT ($TBD)],** except as permitted in Paragraph 1.5 below.

1.5. A-E Compensation and Extra Work

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

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

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

a. The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by Director. If this Contract is not approved by the Board of Supervisors, any change that increases the cumulative Contract price beyond $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. <u>LABOR</u>

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

Draft Model Contract

Contract regardless of the assignments said employee may be given or the days or hours employee may work.

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

2.2 Non-Discrimination

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

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

2.3 Employee Eligibility Verification

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

2.4 Independent Contractor

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

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

2.5 Conflict of Interest-Contractor's Personnel

2.5.1 Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor, Contractor's officers, directors, employees, agents, and subcontractors associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of County 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.

Draft Model Contract

2.5.2 Contractor shall notify County, in writing, of any potential or actual conflicts of interest between Contractor and County that may arise prior to, or during the period of, Contract performance, including, but not limited to, whether any known County public officer's child is an officer or director of, or has an ownership interest of ten (10) percent or more in, Contractor. While Contractor will be required to provide this information without prompting from County any time there is a change regarding conflict of interest, Contractor must also provide an update to County upon request by County.

2.6 Conflict of Interest – County Personnel

2.6.1 County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

2.7 Labor Code Notice

2.7.1 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 Prior to the provision of services under this Contract, A-E shall carry all required insurance at A-E's expense, including all endorsements required herein. A-E agrees to keep such insurance coverage current and provide a Certificate of Insurance and endorsements to the County during the entire term of this Contract. 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. Any failure on the part of the County to monitor or enforce compliance with any of the insurance requirements shall not be construed as a waiver of any required insurance provisions herein.

3.2 Evidence of Insurance

Insurance certificates and all endorsements shall be forwarded to the agency/department address listed on the solicitation. The name of the Insured Party on the Certificate of Insurance shall match the name of the A-E identified in the Contract.

If the A-E fails to provide 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.

Failure to maintain and/or provide evidence of insurance acceptable to the County for the full term of this Contract shall constitute a material breach, upon which the County may terminate this Contract.

3.3 Cancellation and Changes in Insurance

A-E shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to 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.

Draft Model Contract

Insurance requirements are subject to periodic review by County. County retains the right to require additional types of insurance coverage or higher limits throughout the term of this Contract. Any change will be deemed by County Risk Manager as appropriate to adequately protect County's risk. County shall notify A-E in writing of changes in the insurance requirements. If A-E does not provide acceptable Certificates of Insurance and endorsements to 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.

3.4 Subcontractor Insurance Requirements

All subcontractors performing work on behalf of A-E pursuant to this Contract shall be included under A-E's insurance as an Additional Insured or shall maintain insurance subject to the same requirements as A-E *(unless specified below).* 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. A-E shall provide the insurance requirements to every subcontractor and shall be responsible for verifying each subcontractor complies with the required insurance prior to allowing any subcontractor to begin work. Evidence of subcontractor's insurance must be maintained by A-E through the entirety of this Contract for inspection by County at any reasonable time.

3.5 Self-Insured Retention (SIR)

All SIR's shall be clearly stated on the Certificate of Insurance. Any SIR above 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 as evidence it can support the SIR.

3.6 Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

3.7 Waiver of subrogation

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

3.8 Umbrella or Excess Insurance

If A-E utilizes combination of umbrella or excess policies to satisfy the required insurance, these policies must "follow form" and afford no less coverage than the primary policy**.**

3.9 Insurance Coverages and Limits:

A-E shall maintain throughout the contract the minimum limits and coverage as set forth below.

1. Commercial General Liability

Shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The policy shall contain a severability of interests "separation of insureds" clause and include coverage for products completed operations, personal and advertising, and contractual liability.

A. Minimum Limits $1,000,000 per occurrence; $2,000,000 aggregate

B. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers,***

Draft Model Contract

employees, and agents as Additional Insureds, or provide blanket coverage which shall state As Required by Written Contract.

C. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

2. Auto Liability

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad. The policy shall include coverage for owned or scheduled (if applicable), non-owned, and hired vehicles.

A. Minimum Limits: $1,000,000 combined single limit each accident

3. Workers' Compensation and Employer's Liability

Coverage is required for all employees providing services pursuant to the Contract. Worker's Compensation coverage shall have statutory limits and meet all the requirements of the State of California Labor Code.

A. Employer's Liability policy with minimum limits of $1,000,000 per accident or disease

B. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** or provide blanket coverage, which will state As Required by Written Contract.

C. If Contractor has no employees, it may certify to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code by signing a County waiver. The waiver shall be reviewed and will require approval by County Risk Manager or designee.

4. Professional Liability

Coverage for all claims from any actual or alleged negligent act, error, or omission related to professional services required under this Contract

A. Minimum Limits $1,000,000 per claims made and $2,000,000 aggregate

5. Pollution Liability

Coverage may be standalone or combined with another Liability policy. If combined, the total combined limit shall be the same or greater than if the policies were separate.

The 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, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants.

A. Minimum Limits $1,000,000 per occurrence or claims made; $2,000,000 aggregate.

Draft Model Contract

B. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds or provide blanket coverage which shall state As Required by Written Contract.

C. A primary non-contributory endorsement evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

3.10 Claims Made Coverage

If any required coverage is written on a Claims Made basis, Contractor shall agree to the following:

1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

2) 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.

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, Contractor must purchase a claim extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract services.

4. INDEMNITY/COMPLIANCE

4.1 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, and/or District 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.

4.2 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.

4.3 Indemnification

4.3.1 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 or District by a court of competent jurisdiction because of the concurrent active negligence of A-E, County, District, or County Indemnitees, A-E and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this Contract.

Draft Model Contract

4.4 Bills and Liens

4.4.1 A-E shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. A-E shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, A-E shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.

4.5 Compliance with Laws

4.5.1 A-E represents and agrees that services to be provided under this contract shall fully comply, at A-E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the Projects/Services at the time Projects/Services are provided to and accepted by County.

4.5.2 A-E acknowledges that County is relying on A-E for such compliance, and pursuant to the requirements of the indemnification paragraph above, A-E agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.

5. TERMINATION

5.1 Termination of Contract for Cause

5.1.1 If A-E breaches any of the covenants or conditions of this County, County shall have the right to terminate this County 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 County, 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 County, County may at any time, and without cause, terminate this County 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 County.

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

Draft Model Contract

extent specified in a notice of termination and shall require subcontractors to insert the same condition in any lower tier subcontracts.

5.3 Breach of Contract

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

a. afford the A-E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. discontinue payment to the A-E for and during the period in which the A-E is in breach; and

c. offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the County.

5.4 Default

5.4.1 In the event any equipment or service furnished by the A-E in the performance of this Contract should fail to conform to the specifications therein within one (1) calendar year from the County's acceptance of the equipment or service, or any performance period specifically specified within the specifications or Contract, whichever is greater, the County may reject same, and it shall become the duty of the A-E to reclaim and remove the items without expense to the County and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A-E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the County shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A-E the difference between the price specified in this Contract and the actual cost to the County.

5.4.2 In the event the A-E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the County to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this Contract.

5.4.3 In the event of the cancellation of this Contract, either in whole or in part, by reason of the default or breach by the A-E, any loss or damage sustained by the County in procuring any equipment or service which the A-E agreed to supply under this Contract shall be borne and paid for by the A-E.

5.4.4 Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the Projects/Services as agreed to herein, or otherwise substantially violating any provision of this Contract.

5.4.5 Upon termination of the Contract with A-E, the County may begin negotiations with a third-party A-E to provide goods and/or Projects/Services as specified in this Contract.

5.4.6 The right of either Party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

6. MISCELLANEOUS

6.1 Laws to be Observed

Draft Model Contract

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

6.2 Award of Construction Contract and Other Future Contracts

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

6.3 Amendments

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

6.4 Successors and Assigns

6.4.1 The terms and provisions of this Contract shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

6.5 Entirety

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

6.6 Severability

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

6.7 Binding Obligation

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

6.8 Governing Law and Venue

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

6.8.2 The Parties specifically agree that by soliciting and entering into and performing Projects/Services

Draft Model Contract

under this Contract, the A-E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all Projects/Services under this Contract is completed and continuing until the expiration of any applicable limitations period.

6.9 Intentionally Omitted

6.10 Ownership of Documents

6.10.1 All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A-E and/or anyone acting under the supervision of A-E pursuant to this Contract, shall become the property of County upon preparation by A-E and may be used by the County as it may require without additional cost to the County.

6.10.2 County shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. A-E shall be held harmless for release of such data as may be prepared or created under this Contract to any third party. If A-E and/or anyone acting under the supervision of A-E should later desire to use any of the data prepared in connection with this Contract, A-E shall first obtain the written approval of County.

6.11 Confidentiality

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

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

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

6.12 Publication

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

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

Draft Model Contract

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: «COMPANY»
«ADDRESS»
«CITY_STATE_ZIP»
Attn: «CONTACT»
Phone: «PHONE»
E-mail: «EMAIL»

For County: County Department/ Insert Section
Address
City, State Zip
Attn: «COUNTYPM»
Phone: «COUNTYPHONE»
E-mail: «COUNTYEMAIL»

cc: County Department/ Insert Section
Address:
City, State Zip
Attn: «BUYER»

Draft Model Contract

Phone: «BUYERPHONE»
E-mail: «BUYEREMAIL»

6.15 Attorney's Fees

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

6.16 Interpretation

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

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

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

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

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

6.17 Headings

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

6.18 Acceptance

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

6.19 Changes

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

6.20 Assignment

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

Draft Model Contract

breach of this Contract.

6.21 Changes in Ownership

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

6.22 Force Majeure

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

6.23 Calendar Days

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

6.24 Title to Data

6.24.1 All materials, documents, data or information obtained from the County data files or any County medium furnished to the A-E in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the A-E after completion or termination of this Contract without the express written consent of the County.

6.24.2 All materials, documents, data or information, including copies furnished by County and loaned to A-E for his temporary use, must be returned to the County at the end of this Contract unless otherwise specified by the Director.

6.25 Availability of Funds

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

6.26 Contingency of Funding

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

6.27 Contract Construction

Draft Model Contract

6.27.1 The Parties acknowledge that each Party and its counsel have reviewed this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Contract or any amendment or exhibits hereto.

6.28 Conflicts of Interest

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

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

6.29 Usage

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

6.30 Wage Rates

6.30.1 Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at *www.dir.ca.gov/DLSR/PWD*. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

6.31 Apprenticeship Requirements

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

6.32 Registration of Contractor

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

6.33 Payroll Records

Draft Model Contract

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

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

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

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

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

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

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

6.33.8 Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

6.33.9 Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit $100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

6.33.10 Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq. and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

6.34 Work Hour Penalty

Draft Model Contract

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

6.35 Apprentices

6.35.1 The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

6.35.2 Pursuant to Labor Code Section 1777.5, if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

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

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

6.35 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 the 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). AE 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.

6.36 Campaign Contribution Disclosure Requirement

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.

6.37 Subcontracting

Draft Model Contract

No performance of this Contract or any portion thereof may be subcontracted or otherwise delegated by A-E, in whole or in part, without first obtaining the prior express written consent of County. Any attempt by A-E to subcontract or delegate any performance of this Contract without the prior express written consent of County shall be invalid and shall constitute a material breach of this Contract, and any attempted assignment or delegation in derogation of this paragraph shall be void.

In the event that A-E is authorized by County to subcontract, this Contract shall take precedence over the terms of the agreement between A-E and subcontractor, and any agreement between A-E and a subcontractor shall incorporate by reference the terms of this Contract. A-E shall remain responsible for the performance of this Contract and indemnification of County notwithstanding the County's consent to A-E's request for approval of a subcontractor. Under no circumstances shall County be required to directly monitor the performance of any subcontractor. All work performed by a subcontractor must be monitored by A-E and must meet the approval of the County of Orange pursuant to the terms of this Contract.

6.38 Cooperative Agreement

6.38.1 This Contract is a cooperative contract and may be utilized by all County of Orange departments.

The provisions and pricing of this Contract may be extended, at the option of Contractor, to any Municipal, County, Public Utility, Hospital, Educational Institution, or any other non-profit or governmental organization (the "Cooperative Program"). Parties in a Cooperative Program 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. Contractor shall be required to include in any agreement entered into with another agency or entity that is entered into pursuant to the provisions and pricing of this Contract a clause that binds the Parties to the agreement to "indemnify, defend with counsel approved in writing by the County of Orange, California ("County"), and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided" under the agreement.. Failure to include this clause voids the Contract's extension to a Cooperative Program and 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 County of Orange makes no guarantee of usage by other users of this Contract.

As a cost-recovery mechanism for County, a 2 percent administrative rebate on total sales from all subordinate contracts will be paid to the County for any contracts the Contractor agrees to enter into with another agency or entity, other than the County of Orange or a department thereof, under the provisions and pricing of this Contract. The County has partnered with Pavilion, a third-party administrator, responsible for managing all reporting and payments under this Cooperative Program. The Contractor shall provide quarterly Volume Sales Reports about additional sales to other entities under the provisions and pricing of this Contract. The Reports shall include the ordering agency, detail of items sold, including description, quantity, and price, and shall include all transactions pertaining to sales under the Contract provisions and pricing for that Reporting Period. Contractor shall provide the Volume Sales Reports regardless of whether or not any sales have been conducted. Failure of the Contractor to provide quarterly reports as

Draft Model Contract

required may be deemed by the County as a material breach of the Contract. A late penalty of 15 percent on the value of the rebate may be assessed to the Contractor for each month the payments are not received.

Subordinate contracts must be executed prior to the expiration or earlier termination of this Contract and may survive the expiration of this Contract. This Cooperative Contract provision shall survive expiration or termination of this Contract.

Draft Model Contract

IF THE CONTRACT BEGINS AT TIME OF SIGNATURE:

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

or

IF THE CONTRACT BEGINS ON A SPECIFIC DATE:

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date first above written.

«COMPANY»,
a «STofINC» 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

Draft Model Contract

By: _____
Deputy

Signature: _____

Date: _____

Draft Model Contract

ATTACHMENT A
SCOPE OF WORK

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 Design, Project Administration, and Management Services for various projects. To supplement existing resources, County intends to issue Architect-Engineer (A-E) Construction Testing and Inspection Services – Task Order Contract for use by County and District on an "as-needed" basis. No specified amount of work is guaranteed to A-E.

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 public works facilities. 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, civil engineers, structural engineers, geotechnical engineers, 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 be responsible for:

A. Obtaining data by reviewing record drawings, visiting the site of the construction and by conferences with the County Staff/Project Team 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, water quality, Waters of the US, Wildlife, Fish and Game etc.;

Draft Model Contract

G. Construction administration services, testing and commissioning;

H. Closeout services, as-built plans, material lists, project acceptance, etc.

I. The coordination of the various elements of the design to assure compatibility of hydrology and hydraulics, geotechnical, 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 a restricted access County site will require A-E to comply with the security and ID badge requirements of that facility.

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 – DESCRIPTION OF SERVICES – TASK ORDER CONTRACT

The Contractor shall provide qualified personnel, equipment, laboratories, subconsultants, and technical support necessary to perform on-call construction testing, inspection, environmental, and related professional services for County capital improvement, maintenance, repair, renovation, demolition, emergency response, and regulatory-compliance projects. Services may be required during planning, design, bidding, construction, closeout, or post-construction evaluation. Work will be performed only when authorized through an executed Contract Task Order (CTO) and may occur at County-owned, leased, operated, or supported facilities and project sites.

A. Services That May Be Authorized

Draft Model Contract

Depending on the needs of a particular project, a CTO may authorize one or more of the following service categories:

- Construction materials testing and special inspection, including concrete, grout, masonry, reinforcing steel, structural steel, welding, bolting, metal deck, anchors, fireproofing, firestopping, roofing, waterproofing, and other building or civil materials and assemblies.
- Geotechnical and earthwork services, including subsurface exploration, laboratory testing, foundation and pavement recommendations, grading and excavation observation, fill and backfill testing, compaction testing, infiltration or percolation testing, pile observation, and investigation of settlement or distress.
- Pavement and asphalt services, including subgrade and aggregate-base testing, asphalt sampling and testing, placement and compaction observation, pavement coring, condition surveys, forensic evaluation, and rehabilitation recommendations.
- Hazardous materials and industrial hygiene services involving asbestos, lead, mold, silica, indoor air quality, polychlorinated biphenyls, petroleum products, chemicals, and other suspected hazardous materials or exposure conditions.
- Environmental site assessment and investigation services, including Phase I and Phase II environmental site assessments, soil, soil-vapor, groundwater, sediment, surface-water, wastewater, and building-material sampling; underground-storage-tank assessments; geophysical surveys; stormwater investigations; and regulatory coordination.
- Remediation and corrective-action services, including remedial alternatives analysis, response action plans, soil management plans, cleanup specifications, confirmation sampling, waste characterization, regulatory submittals, implementation monitoring, and closure documentation.
- Cultural and archaeological resources services, including records searches, field surveys, Phase I and Phase II investigations, archaeological monitoring, discovery documentation, artifact analysis, technical reporting, and curation support.
- Testing, adjusting, and balancing services for air, hydronic, exhaust, smoke-control, stair and shaft pressurization, laboratory hood, pumping, and related mechanical systems.
- Related technical services specifically authorized by the County, which may include peer review, constructability review, forensic investigation, expert technical support, regulatory support, cost estimating, scheduling input, training, meetings, data management, and document control.

B. Project-Specific Scope Development

Before issuance of each CTO, the Contractor shall review the information provided by the County and submit a detailed written proposal. The proposal shall define the work to be performed, assumptions, exclusions, applicable service standards, staffing and subconsultants, estimated labor

Draft Model Contract

hours, reimbursable expenses, schedule, deliverables, and not-to-exceed fee. The Contractor shall identify missing or conflicting information and recommend any additional investigation, testing, inspection, or coordination necessary to complete the assignment.

The final CTO will identify the authorized services, project location, County Project Manager, key personnel, budget, schedule, reporting requirements, deliverable format, and any project-specific safety, security, access, permitting, laboratory, or certification requirements. If a CTO conflicts with this general Scope of Work, the more specific CTO requirement will govern that assignment, unless otherwise stated in the Contract.

C. Performance and Coordination Requirements

- Provide appropriately licensed, registered, certified, trained, and experienced personnel for each assigned discipline. Required licenses, certifications, laboratory accreditations, and equipment calibrations shall remain current throughout performance.
- Coordinate site access, schedules, inspections, sampling, testing, shutdowns, destructive investigation, traffic control, excavation, utility clearance, and restoration with the County and affected project participants.
- Perform work in accordance with applicable laws, codes, regulations, permits, approved plans and specifications, manufacturer requirements, recognized test methods, and the professional standard of care.
- Maintain objective and independent observations and test results. Testing and inspection by the Contractor will not relieve contractors, designers, or other parties of their contractual responsibilities.
- Immediately notify the County Project Manager of unsafe conditions, suspected hazardous materials, failed tests, rejected materials, nonconforming work, concealed conditions, or circumstances likely to affect project cost, schedule, quality, or regulatory compliance.
- Do not perform work outside the authorized CTO or incur costs above the approved not-to-exceed amount without prior written County authorization.

D. Documentation and Deliverables

The Contractor shall prepare complete, accurate, and project-specific documentation for the services performed. Depending on the CTO, deliverables may include field reports, daily logs, test reports, laboratory results, chain-of-custody records, photographs, drawings, inspection and testing plans, deficiency or nonconformance logs, survey reports, technical memoranda, recommendations, regulatory submittals, draft and final reports, electronic data, and closeout records. Reports shall clearly identify the work observed, methods used, results obtained, applicable acceptance criteria, deficiencies, limitations, corrective actions, and required follow-up.

Unless a different timeframe is established in the CTO, urgent or failing results shall be communicated immediately, field reports shall be submitted no later than the next business day,

Draft Model Contract

and other deliverables shall be submitted promptly enough to support the project schedule. Deliverables shall be provided in searchable PDF and, when requested, in the native editable format. Required reports shall be signed, stamped, or certified by the responsible qualified professional.

E. Quality Control and County Acceptance

The Contractor shall apply a documented quality control process to all services and deliverables. Before submittal, qualified personnel shall review the work for technical accuracy, completeness, consistency, proper sample identification, calculations, test methods, acceptance criteria, conclusions, and recommendations. The Contractor shall correct errors, omissions, unsupported conclusions, inconsistent data, or noncompliant deliverables attributable to the Contractor without additional cost to the County.

The detailed requirements for the general service categories are provided in Exhibit A. The categories listed in this Section and Exhibit A establish the types of services that may be requested; they do not guarantee any minimum quantity of work. The Contractor shall perform only those categories and tasks specifically authorized by the County in an executed CTO. County review, comment, acceptance, or payment does not relieve the Contractor of responsibility for the professional quality, accuracy, completeness, or Contract compliance of its work.

Draft Model Contract

Draft Model Contract

ATTACHMENT B
COST/COMPENSATION

I. **COMPENSATION**: This is a **time and materials** Contract between County and A-E for Architect Engineer (A-E) Construction Testing and Inspection Services – Task Order Contract 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 "Term and Maximum Compensation" of the Contract unless authorized by amendment in accordance with Paragraphs 6.3 and 6.19 of the County Contract Terms and Conditions.**

.

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

A. Classification Rates:

«COMPANY»	
Classification Titles	**Hourly Rate**

***Subcontractor- ABC Company (enter project function)**	
Classification Titles	**Hourly Rate**

***Subcontractor- BCD Company (enter project function)**	
Classification Titles	**Hourly Rate**

***Subcontractor- CDE Company (enter project function)**	
Classification Titles	**Hourly Rate**

Draft Model Contract

***Subcontractor- DEF Company (enter project function)**	
Classification Titles	**Hourly Rate**

***Subcontractor- EFG Company (enter project function)**	
Classification Titles	**Hourly Rate**

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

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 photocopying, 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 the County:

A. 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.

Draft Model Contract

B. Printing expenses paid to outside contractors, to the extent such contractors and reproduction rates have been approved by the County Project Manager.

C. 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.

D. Travel costs shall only be reimbursed if approved in advance in writing by the County Project Manager and are subject to the following restrictions:

1. 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.

E. Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.

F. Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

G. 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 the 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

Draft Model Contract

H. Total

I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC *TBD*
Attn: Accounts Payable
Address
City, State Zip

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.

Draft Model Contract

ATTACHMENT C
STAFFING PLAN

1. A-E KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Licenses/ Certifications (include license number)

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 departments.***

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.

Draft Model Contract

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

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

Corporate Name	Corporate Address	Local Office Address*	Contact Name	Telephone Number	Project Function	DVBE Certification Number	SBA Certification Number

Draft