

**COUNTY OF ORANGE**  
**OC PUBLIC WORKS**  
**PROCUREMENT SERVICES**



**REQUEST FOR PROPOSAL**

**FOR:**

**CEO REAL ESTATE**  
**OWNER'S REPRESENTATIVE**  
**TO THE**  
**COUNTY OF ORANGE**  
**FOR THE**  
**DANA POINT REVITALIZATION PROJECT**

**RFP No. 080-C014368-IM (2)**

**COVER PAGE**



COUNTY OF ORANGE  
 OC Public Works  
 Procurement Services  
 300 N. Flower Street, Ste. 861  
 Santa Ana, CA 92703

**PROPOSALS MUST BE  
 RECEIVED ON OR BEFORE:**

**4:00 P.M. PT**  
**By**  
**August 10, 2017**

**RFP #:**  
**080-C014368-IM (2)**

**INSTRUCTIONS:**

1. SUBMIT ONE (1) SIGNED ORIGINAL, FIVE (5) COPIES AND ONE (1) SOFT COPY OF YOUR PROPOSAL IN MS WORD OR TEXT SEARCHABLE PDF ON A FLASH DRIVE.
2. RETURN THIS PAGE SIGNED, WITH PROPOSAL.
3. ALL PROPOSALS ARE TO BE IDENTIFIED WITH RFP # AND RETURNED IN A SEALED ENVELOPE OR PACKAGE.
4. FOR FURTHER INFORMATION, CONTACT: [Isela.Martinez@ocpw.ocgov.com](mailto:Isela.Martinez@ocpw.ocgov.com)

**RFP RELEASE DATE:**  
**July 13, 2017**

**REQUEST FOR PROPOSALS ("RFP")**

**PROJECT TITLE: CEO REAL ESTATE- OWNER'S REPRESENTATIVE TO THE COUNTY OF ORANGE FOR THE DANA POINT REVITALIZATION PROJECT**

The County of Orange ("County") is soliciting Proposals from qualified firms ("Respondents"), to provide a wide range of owner's representation, project management and construction monitoring and quality assurance consulting services in support of the County's revitalization of Dana Point Harbor ("Harbor"). The awarded Proposal ("Contract") will be between the County and the selected Respondent. Respondents must meet the minimum qualifications and requirements set forth herein.

This Request for Proposal is set out in the following format:

- SECTION I. Introduction and Instructions to Respondents
- SECTION II. Response Requirements
- SECTION III. Model Contract

ALL QUESTIONS/REQUESTS FOR INTERPRETATION ARE DUE: **JULY 28, 2017 - 4:00 P.M. PACIFIC TIME**

All questions and inquiries related to this RFP must be directed to: Isela Martinez, County Deputy Purchasing Agent ("DPA"), OC Public Works/Procurement Services, via the County's on-line bid system at: <https://www.bidsync.com> under the bid page for this solicitation.

**Respondents are not to contact other County personnel with any questions or clarifications concerning this RFP.** OC Public Works/Procurement Services will provide all official communication concerning this RFP. Any County response relevant to this RFP other than through or approved by OC Public Works/Procurement Services is unauthorized and will be considered invalid.

I HAVE READ, UNDERSTOOD AND AGREE TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSALS, AND TO THE TERMS, CONDITIONS AND ATTACHMENTS REFERENCED HEREIN.		
Date: _____	Company Legal Name: _____	
*Legally Authorized Signature	Name	Title
*Legally Authorized Signature	Name	Title

\* If the Respondent is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

**RETURN THIS SHEET WITH YOUR RESPONSE**

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**SECTION I**

**INTRODUCTION**  
**AND**  
**INSTRUCTIONS TO RESPONDENTS**

**SECTION I: INTRODUCTION AND INSTRUCTIONS TO RESPONDENTS**

**A. INTRODUCTION**

The County of Orange ("County") is soliciting Proposals from qualified firms to execute a Contract ("Contract") with the County to provide a wide range of owner's representation, project management and construction monitoring and quality assurance consulting services (the "Representative Services") in support of the County's revitalization of Dana Point Harbor ("Harbor").

**B. PROPOSED TIME SCHEDULE (subject to change)**

<b>July 13, 2017</b>	Release of RFP solicitation
<b>July 26, 2017</b>	Mandatory Pre-Proposal Meeting
<b>July 28, 2017</b>	Written Questions from Respondents Due by 4:00 P.M. PT
<b>August 10, 2017</b>	RFP Submittal Closing Date and Time - 4:00 P.M. PT
<b>September 26, 2017</b>	RFP Respondent Interviews

**C. INSTRUCTIONS TO RESPONDENTS AND PROCEDURES FOR SUBMITTAL**

**A mandatory pre-proposal meeting will be held on July 26, 2017 at 1:00 p.m.** Attendees shall check in at the **Dana Cove Room** of the **OC Sailing and Events Center** at 34451 Ensenada Place, Dana Point, CA 92629. Parking is available in the Baby Beach parking lot.

Attendance is mandatory in order to participate in the proposal process. Failure to attend this pre-proposal meeting will render the Proposal non-responsive. Under no circumstances will an alternative pre-proposal meeting be granted. Qualified firms or team of firms intent on submitting a Proposal must have their meeting representative arrive on time and remain for the entire meeting. All Respondents must be signed-in in order to continue in the RFP process. Representatives arriving tardy in excess of ten (10) minutes or more after **1:00 p.m.** will be deemed as non-responsive to the mandatory requirement as evidenced by the closure of the sign-in sheet at exactly **1:10 p.m.** This rule will be strictly adhered to without exception or consideration of cause. Failure to attend this pre-proposal meeting will render any Proposal non-responsive. Any Proposal submitted for which Respondents have not been represented at this mandatory pre-proposal site meeting will be rejected.

The mandatory pre-proposal meeting will establish a list of firms eligible to submit a Proposal. The purpose of the meeting is to familiarize Respondents with the County, to answer questions on the RFP and to discuss any technicalities of the proposed scope of services. Under no circumstances will an alternative pre-proposal meeting be granted.

1. Respondents shall acknowledge receipt of this RFP and *indicate their intent to attend* the pre-proposal meeting by email to [isela.martinez@ocpw.ocgov.com](mailto:isela.martinez@ocpw.ocgov.com) prior to end of business day **July 21, 2017**.
2. Clearly identified Proposals are due by 4:00 P.M. PT on the date as specified on the Cover Page, and are to be addressed **in a sealed package** to:

**Re: RFP No. 080-C014368 (2)-IM for CEO Real Estate- Owner's Representative to the County of Orange for the Dana Point Revitalization Project**

Attn: Isela Martinez – c/o: Badge Access Counter  
County of Orange, OC Public Works/Procurement Services  
300 N. Flower Street, 6<sup>th</sup> Floor  
Santa Ana, CA 92703-5000

**Package Submittal Drop-off Hours:**

Monday through Friday  
8:00 a.m. to 12:00 p.m.  
1:00 p.m. to 4:00 p.m.  
Closed from 12:00 P.M. to 1:00 P.M. (PT)

**Facsimile and e-mail Proposals will NOT be allowed. Proposals must be time-stamped on the outside of the sealed package by the OC Public Works, Procurement Services Badge Access Counter. The delivery location for the receipt of Proposals is the OC Public Works Badge Access Counter. It is the responsibility of the Respondent to ensure that delivery is made to the OC Public Works Procurement Services Badge Access Counter at the above address by the due date and time specified. Late Proposals or Proposals delivered to any other location will not be accepted. Delivery receipts are available upon request.**

**Parking and loading zone are available adjacent to the building. The County of Orange will not provide free parking.**

3. The County has attempted to provide all information available. It is the responsibility of each Respondent to review, evaluate, and, where necessary, request any clarification prior to submission of a Proposal. If any person contemplating submitting a response to this Request for Proposals is in doubt as to the true meaning of any part of the solicitation documents attached hereto or finds discrepancies in or omissions from the specifications, they may submit a written request for clarification/interpretation to the County Deputy Purchasing Agent (DPA) via the County's on-line bid system at: <https://www.bidsync.com> under the bid page for this solicitation.

If clarification or interpretation of this solicitation is considered necessary by County, a written addendum shall be issued and the information will be posted on County's on-line bid system at: <https://www.bidsync.com>. Any interpretation of, or correction to, this solicitation shall be issued by the County DPA. The County will make reasonable efforts to provide a copy of such addendum to each person/firm receiving the original solicitation documents directly from the County. However, the County does not guarantee receipt by Respondent of all addenda. It is the responsibility of each Respondent to periodically check the County's on-line bid system to ensure that they have received and reviewed any and all addenda to this solicitation. The County will not be responsible for any other explanations, corrections to, or interpretations of the documents, including any oral information.

After this RFP has been issued, any Respondent that undertakes to discuss any matter related to this RFP with anyone within the County other than the identified County DPA is presumed to have gained an unfair competitive advantage and may be disqualified. All communications regarding this RFP and any matter related thereto shall be in accordance with this RFP.

**All questions or requests for interpretation must be received by the date and time specified on Cover Page (page 1).**

4. Proposals must be valid for a period of at least three hundred and sixty five (365) calendar days from the Proposal due date. No Proposal may be withdrawn after the submission date.

5. Each Respondent must provide: **One (1) signed original; five (5) copies and additionally one (1) "soft" copy in MS Word format or text searchable PDF on flash drive** of their Proposal. The original signature copy is to be clearly marked as "ORIGINAL" on the outside cover and contain original ink signatures.
6. All Proposals shall be submitted on standard 8.5 x 11-inch paper. All pages must be numbered and identified sequentially by section. Proposals must be tabbed and indexed in accordance with the information requested in Section II, Proposal Response Requirements. It is imperative that all Respondents responding to this RFP comply, exactly and completely, with the instructions set forth herein. All responses to this RFP shall be typewritten or word-processed (except where otherwise provided or noted), concise, straightforward, ***and must fully address each requirement and question***. Although not as a substitute for a complete written response, additional material, such as technical documents, may be referenced in any response, if the material is included in the same section as additional information.
7. Proposals are not to be marked as confidential or proprietary. The County may refuse to consider any Proposal so marked. Proposals submitted in response to this RFP may become subject to public disclosure. The County shall not be liable in any way for disclosure of any such records. Additionally, all Proposals shall become the property of the County. The County reserves the right to make use of any information or ideas in the Proposals submitted.

All Proposals and supporting documents will be subject to the provisions of the California Public Records Act (California Code Government Code 6250 et seq.)(PRA) and will be disclosed or withheld in accordance therewith.

Respondents should not request that certain information be treated as exempt, and statements in the Proposals should not be marked as confidential or proprietary. In the event that any information is marked as confidential or proprietary, as it may be absolutely necessary, Respondents have the sole responsibility of obtaining any applicable injunctive reliefs to prevent the disclosure of such confidential proprietary information in connection with any request made to County pursuant to PRA or a subpoena for disclosure of such information.

8. Each Respondent shall exercise reasonable care and diligence to avoid submitting a Proposal that could result in a conflict of interest if Respondent were to be selected. This obligation shall apply to the Respondent, the Respondent's employees, agents, and relatives, sub-contractors, and third parties associated with accomplishing work and services in Proposal. In the event Respondent has done work for the County on this Project in the past or has reason to believe that a conflict of interest may exist for Respondent in regard to this Project, Respondent should consult with its legal counsel prior to responding to this RFP. Any Respondent who is found to have an actual conflict of interest may have its Proposal rejected on that ground.

Respondent, its employees and/or consultants 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).

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

9. By submitting a Proposal, the Respondent represents that it has thoroughly examined the County's requirements and are familiar with the services required under this RFP and that it is qualified and capable of providing the services to achieve the County's objectives.
10. Each Respondent must submit its Proposal in strict accordance with all requirements of this RFP and compliance must be stated in the Proposal. **Deviations, clarifications and/or exceptions** must be clearly identified and listed separately as alternative items for the County's **consideration as specified in Section II, Part 1, H. "Statement of Compliance."**
11. County reserves the right to negotiate modifications with any Respondent as necessary to serve the best interests of the County. Any Proposal may be rejected if it is conditional, incomplete or deviates from specifications in this RFP. The County reserves the right to waive, at its discretion, any procedural irregularity, immaterial defects or other improprieties which the County deems reasonably correctable or otherwise not warranting rejection of the Proposal. Any waiver will not excuse a proponent from full compliance.
12. Pre-contractual expenses are not to be included in the Cost/Compensation (Attachment B). Pre-contractual expenses are defined as including, but not limited to, expenses incurred by the Respondent in: a) preparing its Proposal in response to this RFP; b) submitting that Proposal to the County; c) negotiating with the County any matter related to the Respondent's Proposal; and d) any other expenses incurred by the Respondent prior to the date of award and execution, if any, of the Contract.
13. County reserves the right to: a) negotiate the final Contract with any Respondent(s); b) withdraw this RFP in whole or part at any time without prior notice (the County makes no representations that any Contract will be awarded to any Respondent responding to this RFP; c) award its total requirements to one Respondent or to apportion those requirements among two or more Respondents; and/or d) reject any Proposal if it is conditional, incomplete or deviates significantly from the services requested in this RFP.

Proposals submitted should contain the **Respondent's most favorable terms and conditions**, since the selection and award may be made without discussion with any Respondent.

14. Where two or more Respondents desire to submit a single Proposal in response to this solicitation, they must do so on a prime/subcontractor basis rather than as a joint venture. The County intends to contract with a single firm that may subcontract with multiple firms (team) but not with multiple firms doing business as a joint venture.
15. The County does not require and neither encourages nor discourages the use of advocates or other consultants for the purpose of securing business.
16. In the event a Respondent believes that the County's solicitation is unfairly restrictive or ambiguous or contains conflicting provisions or the Respondent believes that any resulting Contract would be commercially impractical to perform, the Respondent must file a written protest with the County DPA.

**a. Procedure**

All protests shall be typed under the protestor's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

- 1) The name, address and telephone number of the protestor;
- 2) The signature of the protestor or the protestor's representative;



- 3) The solicitation or contract number;
- 4) A detailed statement of the legal and/or factual grounds for the protest; and
- 5) The form of relief requested.

**b. Protest of Bid/Proposal Specifications:**

All protests related to bid or Proposal specifications must be submitted to the DPA no later than five (5) business days prior to the closing date for Proposals. Protests received after the five (5) business-day deadline will not be considered by the County.

In the event the protest of specifications is denied and the protestor wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid/Proposal submittal procedures provided in the bid/Proposal.

**c. Protest of Award of Contract:**

Immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of an Agenda Staff Report (ASR) for award of Contract, the DPA shall send a Notice of Intent to Award a Contract to all participating vendors and submit a copy to the Clerk of the Board.

- 1) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the Contract.
- 2) Protests relating to a proposed Contract award which are received after the five (5) business day deadline will not be considered by the County.
- 3) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
- 4) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the Contract award or if necessary, filing the item for approval by the Board of Supervisors.

**d. Protest Process**

- 1) In the event of a timely protest, the County shall not proceed with the solicitation or award of the Contract until the DPA, or the Director renders a decision on the protest.
- 2) Upon receipt of a timely protest, the DPA will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- 3) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the Contract is necessary to protect the substantial interests of the County. The award of a Contract shall in no way compromise the protestor's right to the protest procedures outlined herein.
- 4) If the protestor disagrees with the decision of the DPA, the protestor may submit a written appeal to the Office of the Director.

**e. Appeal Process**

- 1) If the protestor wishes to appeal the decision of the DPA, the protestor must submit, within three (3) business days from receipt of the DPA's decision, a written appeal to the Office of the Director.
- 2) Within fifteen (15) business days, the Office of the Director will conduct a third party review of all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision.
- 3) The decision of the Director will be final and there shall be no right to any administrative appeals of this decision.

**D. EVALUATION PROCESS AND CRITERIA**

An Evaluation Committee will conduct evaluations of the Proposals submitted through the RFP process. The committee will consider the information supplied and not supplied by Respondents. If it finds a failure or deficiency in the Proposals or any information provided in connection thereto, the Evaluation Committee may reject said Proposal or information or reflect the failure or deficiency in the evaluation.

The County may request clarifications, or otherwise verify the contents of the Proposal, including information about the Respondent, consultants, and sub-consultants. County reserves the right to seek publicly available information about the Respondents.

An evaluation panel will rank the Respondent's Proposal and develop a shortlist of Respondents. At the discretion of the evaluation panel and based on evaluation results and County needs, top ranked (up to four) Respondents may be invited for interviews.

Minimum Qualifications/Requirements: Respondent's Proposal shall meet the following minimum requirements and qualifications to proceed to the evaluation and scoring process:

The Owner's Representative shall demonstrate through a combination of education and experience the ability to maintain the cost, control the schedule, manage the Project, conduct meetings, maintain records, etc.

- a. Served as Owner's Representative on at least one public agency government project within the past five years
- b. Managed at least two projects of \$25,000,000 or more in construction costs within the last 10 years
- c. Experience providing project management services including on-site management and facilitation of communications between various Project stakeholders
- d. The leadership abilities necessary to deliver the project successfully within communicated schedule milestones and within the not to exceed budget
- e. A clear understanding of the Project and the scope of work
- f. The ability to communicate effectively orally and in writing

**1. Written Proposals Scoring Format: 700 maximum:**

Proposals will be evaluated on the basis of the responsiveness to the questions and requirements in this RFP. Proposals will be competitively evaluated on the basis of the following criteria listed in a random sequence to their order of importance:

- a. Expertise, Qualifications & Experience (200 max)
    - i. Extent of experience and involvement of the proposed Owner's Representative and key staff on referenced projects
    - ii. Extent of experience and involvement of the proposed Owner's Representative and key staff on other projects that closely match the requirements outlined in this RFP
    - iii. Extent that the Representative Services represent the core competencies of the firm
  - b. Key Personnel (100 max)
    - i. Resumes and professional credentials of the assigned Owner's Representative responsible for day-to-day Project operations and management of this Project
  - c. Adequate Staff and Availability to Perform Project (100 max)
    - i. Capacity of the firm and ability to locally commit designated team members for the duration of the Project
  - d. Approach/Understanding of Project (200 max)
    - i. Approach to overall project management
    - ii. Approach to design review and construction oversight
    - iii. Approach and protocols to budget overview and cost control measures
    - iv. Approach and protocols for schedule compliance and monitoring
    - v. Approach to change management
    - vi. Approach to management of contingencies
    - vii. Approach and protocols for contract administration and record keeping
    - viii. Approach to Project closeout and transition from construction to occupancy and operations
    - ix. Quality Control
  - e. Proposal Organization and Completeness of Response (50 max)
  - f. Degree of Compliance with the County Model Contract Terms, Conditions, and Scope (50 max)
2. **Presentation/Interview Scoring Format: 300 points maximum**

The County will conduct interviews with Respondents, as needed. Respondents shall be ready to attend the Interview within five (5) business days of notification. The County may also send written questions and ask for written responses within three (3) business days.

Proposals deemed to meet all minimum RFP requirements will be scored based on the established criteria, which have been weighted and will be assigned points that measure the responsiveness to each identified criterion. The total number of points earned will be tallied for each Proposal, and the Proposals will be ranked in order, based upon the Respondent(s) submitted written materials.

County reserves the right to conduct, or to not conduct, interviews and/or presentations with the highest-rated Respondent(s). The decision whether to conduct interviews/presentations rests solely with County and the decision of the DPA is final. If the interviews are not conducted, the written

Proposals will be scored at a maximum of 700 points. Respondent shall be ready to attend meeting within five (5) calendar days of notification. The County reserves the right to interview additional Respondents. Any inquiry to determine the responsibility of a Respondent to this RFP may be conducted. Respondent agrees that the submission of a Proposal is permission by Respondent for County to verify all information contained therein. If County believes it necessary, additional information may be requested from Respondent. Failure to comply with any such request may disqualify a Respondent from further consideration.

#### **E. SELECTION/AWARD PROCEDURES**

Upon the completion of the evaluation process, the Evaluation Panel will make a recommendation for award to the County DPA. Final award determination shall be subject to reference checks and past performance.

The Model Contract contained in Section III of this solicitation is the Contract proposed for execution. It may be modified to incorporate negotiated items and other pertinent terms and conditions set forth in this solicitation, including special conditions and requirements and those added by addendum and necessary attachments and/or exhibits and to reflect the Respondent's Proposal and qualifications.

It is the County's intention to negotiate a Contract with the first-ranked Respondent. Should the parties fail to reach agreement on Contract terms, County may begin negotiations with second ranked Respondent. The County reserves the right to make no award, or award the Contract in its entirety to a sole Respondent.

Negotiations may or may not be conducted with the finalists; therefore, the Proposals submitted should contain Respondent's most favorable terms and conditions, since the selection and award may be made without further discussion. **Exceptions to the terms and conditions of the proposed Contract or the statements regarding Respondent's inability to comply with any of the provisions thereof are to be declared in the response to the RFP in Section II, Part 1, H. "Statement of Compliance".**

#### **F. ORANGE COUNTY CHILD SUPPORT AND W-9 REQUIREMENTS**

##### **1. ORANGE COUNTY CHILD SUPPORT**

In order to comply with the child support enforcement requirements of the County, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department Deputy Purchasing Agent:

- a. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
- b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
- c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another contractor. In the event a Contract has been issued, failure of the contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

**2. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE FORM W-9 REQUIREMENT**

Effective June 3, 2006, all Contractors, entering into a Contract with the County, who are not already established in the Countywide Accounting and Personnel System (CAPS) as an Auditor-Controller vendor, will be required to submit to the County a federal Form W-9, or form W-8 for foreign vendors. The County will inform the Contractor, at the time of award, if the Form W-9 or W-8, will be required.

In order to comply with this County requirement, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department Deputy Purchasing Agent the required W-9 or W-8.

## **SECTION II**

### **RESPONSE REQUIREMENTS**

## **SECTION II: RESPONSE REQUIREMENTS**

**Proposals are limited to 30 single-sided pages (11 font or greater).** Therefore, Proposals must be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content with sufficient detail to allow for accurate evaluation and comparative analysis. *Note: Proposals that exceed the page limit noted above may be disqualified from further consideration.*

**Proposals must include three tabbed sections, Part 1, Part 2 and Part 3 and must be indexed in the order outlined below. List questions and your responses and/or attachments as numbered and listed within each section.**

---

**Part 1:**

(Complete this section and submit as **Part 1** in the first tabbed section of Proposal.)

**A. Cover Letter/Executive Summary**

All Proposals must be accompanied by a cover letter of introduction and executive summary of the Proposal. The cover letter must be signed by person(s) with authority to bind the Respondent. If the Respondent is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation. An unsigned or improperly signed Proposal submission is grounds for rejection of the Proposal and disqualification from further participation in this RFP process. All Proposals shall include in this first tabbed section, the Cover Page of this RFP and any subsequent addenda issued to this RFP with appropriate signatures as required.

**B. Validity of Proposal**

The County requires that all Proposals be valid for at least three hundred sixty-five (365) calendar days. Submissions not valid for at least three hundred sixty-five (365) days will be considered non-responsive. The Respondent shall state the length of time for which the submitted Proposal shall remain valid below:

\_\_\_\_\_  
Validity of Proposal (in days)

\_\_\_\_\_  
Signature required

**C. Certification of Understanding**

The County assumes no responsibility for any understanding or representation made by any of its officers, employees or agents during or prior to the execution of any Contract resulting from this solicitation unless:

1. Such understanding or representations are expressly stated in the Contract; and
2. The Contract expressly provides that the County therefore assumes the responsibility.

Representations made but not expressly stated and for which liability is not expressly assumed by the County in the Contract shall be deemed only for the information of the Respondent.

By signing below, Respondent certifies that such understanding has been considered in this response.

\_\_\_\_\_  
(Signature required)



**D. Minimum Qualifications/Requirements Statement**

Respondent shall certify that it meets all minimum qualifications and requirements set forth above in this Section II by signing below.

\_\_\_\_\_  
(Signature required)

**E. Certificate of Insurance**

The Respondent shall certify its willingness and ability to provide the required insurance coverage and certificates as set forth in Section III, Model Contract by signing below (see Article "3" for insurance requirements).

\_\_\_\_\_  
(Signature required)

**F. Child Support Enforcement and Form W-9 Requirements**

The Respondent shall certify its willingness and ability to provide the required Orange County Child Support Enforcement and Form W-9 Requirements as indicated in Section I by signing below.

\_\_\_\_\_  
(Signature required)

**G. Conflict of Interest**

**Respondent must certify either 1 or 2 by signing below:**

1. Respondent certifies current/past financial, business or other relationship(s) with the County exist/existed as follows:
  - i. Disclose any financial, business or other relationship with the County, any other entity that the County Board of Supervisors governs, or any County Board member, officer or employee, which may have an impact, effect or influence on the outcome of the services you propose to provide. Provide a list of current clients, employees, principals or shareholders (including family members) who may have a financial interest in the outcome of services you propose to provide.
  - ii. Disclose any financial, business or other relationship within the last three (3) years with any firm or member of any firm who may have a financial interest in the outcome of the work.

\_\_\_\_\_  
(Signature required)

**OR**

2. Respondent certifies that no relationships exist/existed as outlined in item 1. above.

\_\_\_\_\_  
(Signature required)

**H. Statement of Compliance**

A statement of compliance with all parts of this RFP or a listing of exceptions and suggested changes must be submitted in response to this RFP. **Respondent must certify either 1 or 2 by signing below:**

1. This response is in strict compliance with said Request for Proposals, including the terms and conditions set forth in the Contract and its Attachments, and no exceptions thereto are proposed.

\_\_\_\_\_  
(Signature required)

**OR**

2. This response is in strict compliance with said Request for Proposals, including the terms and conditions set forth in the Contract and its Attachments, except for those proposed exceptions listed in a separate attachment hereto.

\_\_\_\_\_  
(Signature required)

- i. Attachment for each proposed exception must include:
  - a. The RFP page number and section of the provision Respondent is taking exception to;
  - b. The complete provision Respondent is taking exception to;
  - c. The Respondent's suggested rewording;
  - d. Reason(s) for submitting the proposed exception; and
  - e. Any impact the proposed exception may have on cost, scheduling, or other areas.

**I. Litigation**

**Respondent must certify either 1 or 2 by signing below:**

1. Respondent certifies current/past litigation as follows:
  - i. Respondent shall provide detailed information regarding any litigation (court and case number), liens, or claims involving Respondent, or any company Respondent holds a controlling interest in, or any company that holds an interest in Respondent, or any of the principal officers of the Respondent's firm in the past seven (7) years.
  - ii. Respondent shall provide detailed information regarding any litigation (court and case number), liens, or claims involving any proposed subcontractors, or any company proposed subcontractors hold a controlling interest in, or any company that holds an interest in subcontractor firm(s), or any of the principal officers of the subcontractor's firm in the past seven (7) years.

\_\_\_\_\_  
(Signature required)

**OR**

2. Respondent certifies that Respondent or proposed subcontractors do not have any past or current litigation.

\_\_\_\_\_  
(Signature required)

**J. Name/Ownership Changes**

**Respondent must certify either 1 or 2 by signing below:**

1. Respondent certifies past company name changes and/or ownership changes as follows:
  - i. Respondent shall provide detailed information regarding any company name changes (including legal business names) in the past seven (7) years.
  - ii. Respondent shall provide detailed information regarding any company ownership changes (including legal business names) in the past seven (7) years.
  - iii. Respondent shall provide detailed information regarding any company name changes for proposed subcontractors (including legal business names) in the past seven (7) years.
  - iv. Respondent shall provide detailed information regarding any company ownership changes for proposed subcontractors (including legal business names) in the past seven (7) years.

\_\_\_\_\_  
(Signature required)

**OR**

2. Respondent certifies that Respondent or proposed subcontractors have not had any company name changes or ownership changes in the past seven (7) years.

\_\_\_\_\_  
(Signature required)

**Part 2:**

**Company Profile**

(Complete this form and submit as **Part 2** in the second tabbed section of Proposal.)

Company Legal Name: \_\_\_\_\_

Company Legal Status (corporation, partnership, sole proprietor, etc.): \_\_\_\_\_

Business Address: \_\_\_\_\_

Website Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_ Facsimile Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Length of time the A-E has been in business: \_\_\_\_\_ Length of time at current location: \_\_\_\_\_

Is your A-E a sole proprietorship doing business under a different name? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please indicate sole proprietor's name and the name you are doing business under:

\_\_\_\_\_

Is your A-E incorporated? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, State of Incorporation: \_\_\_\_\_

Federal Taxpayer ID Number \_\_\_\_\_

Regular business hours: \_\_\_\_\_

Regular holidays and hours when business is closed: \_\_\_\_\_

\_\_\_\_\_

Contact person in reference to this solicitation: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_ Facsimile Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact person for accounts payable: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_ Facsimile Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Name of Project Manager: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_ Facsimile Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

**In the event of an emergency or declared disaster, the following information is required:**

Name of contact during non-business hours: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_ Facsimile Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ Cell or Pager Number: \_\_\_\_\_

**Part 3:**

**Respondent's Proposal**

(Complete this section and submit as *Part 3* in the third tabbed section of Proposal.)

**I. QUALIFICATIONS AND RELATED EXPERIENCE**

This section of the Proposal will establish the ability of Respondent company or team to satisfactorily perform the required work by reasons of experience in performing services of a similar nature, demonstrated competence in the services to be provided, strength and stability of the team, staffing capability, work load, record of meeting schedules on similar projects, and supportive client references. **As part of its response to the following, Respondent should justify how the minimum qualifications/requirements specified below have been satisfied.**

A. Respondent shall provide:

1. A brief profile of your firm, including the name, a brief history, description of your firm, types of services offered;
  - a. The year founded;
  - b. Form of the organization (corporation, partnership, sole proprietorship)
  - c. Number of employees
  - d. Size and location of offices
  - e. Staff and technical capabilities and the type of services that the Respondent is qualified to perform, including any discipline where the Respondent has special expertise.
2. Evidence that the firm and its personnel and/or consultants carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.
3. Evidence to demonstrate that firm's personnel and/or consultants are licensed in all areas relevant to this Contract.
4. A description of firm's experience providing the services described herein to other governmental agencies in California.
5. A listing of three (3) Owner's Representative projects that your firm has completed in the past five (5) years. Include the following information for each project: project description and location, project schedule including start and completion dates, description of services provided, total cost of services provided, project progress reporting, schedules performance, key personnel utilized, and photos.
6. A listing of three (3) public entity projects for which your firm provided Owner's Representative services. Include the following information for each project: project description and location, project schedule including start and completion dates, description of services provided, total cost of services provided, project progress reporting, schedules performance, key personnel utilized, and photos.

7. A general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, or impending merger) that may impede Respondent's ability to complete the services. Please include a copy of the firm's current financial statement.

## **II. PROPOSED STAFFING AND PROJECT ORGANIZATION**

This section of the Proposal should establish the qualifications of the proposed staff to provide the services noted in the Scope of Work.

### **A. Respondent shall:**

1. Complete Attachment C of the Model Contract (included in Section III- page 48, of this Request for Proposals) and submit hereinto:
  - a. Provide the names of Owner's Representative and key staff who may be assigned to the Project, including resumes, licenses and certifications held by those individuals, years of related experience, and length of time with the firm.
  - b. Identify subcontractors (if any) that will be assigned to perform services listed in the Scope of Services, by company name, address, contact person, telephone number and project function. ***Please note that the aggregate money value of the sub-contractors work for any A-E Contract with the County shall not constitute more than forty-nine percent (49%) of the total work under the A-E Contract.***
2. Include names, titles and current resumes of proposed key personnel (Owner's Representative, team leaders) detailing their technical expertise which qualifies them for proposed work, experience directly related to proposed work (identify similar projects), function and responsibility related to proposed work, qualifications licenses/certifications. This key personnel information shall be sufficient to provide confirmation that the firm has adequate staff and the ability to assist in projects as needed.

## **III. WORK PLAN/PROJECT APPROACH**

Respondent shall provide a brief narrative that addresses the services noted in the Scope of Work and demonstrates the Respondent's understanding of County's needs and requirements.

### **A. Respondent shall:**

1. Describe the Respondent's understanding of the County's needs and the proposed approach for effectively providing the services specified within the Scope of Services.
2. Provide proposed methods of approaching/completing the Project, including identification/acknowledgement of general issues and the necessary resources/solutions to accomplish the required services.
3. Any recommended changes or additions to the scope of work that would serve better serve the County's goals.

4. Provide an Organization chart of the proposed team with specific staff assignments, roles, and responsibilities defined for the Owner's Representative, project administrators, and principal in charge.

**IV. FEE SCHEDULE**

- A. Without quoting a fee, briefly describe the proposed fee structure for this project and explain the benefits of using this structure. The proposed fee structure may include:
  1. a lump sum fee proposal, or
  2. an hourly/time and material fee proposal, or
  3. a percentage of Project costs proposal, or
  4. any other fee proposal for the services noted in the Scope of Services
- B. The County reserves the right to negotiate any fee structure deemed appropriate at the time a contract is negotiated, even if the County's desired fee structure deviates from that which was proposed by any given Respondent.

**V. ADDITIONAL INFORMATION**

- A. Provide a **minimum of five (5) references** for the services cited as related experience. If available, such references should be representatives of California jurisdictions to which the Respondent is currently providing, or has provided, services within the last five (5) years. Only one reference may be used for projects completed for the County of Orange. Reference information should be provided as listed below. **DO NOT provide reference letters at this time.**
  1. Client Name
  2. Address
  3. Contact information (name, phone no., email)
  4. Project Name/Description
  5. Date of Project
- B. Respondent shall describe additional relevant information concerning the services offered in this RFP that it considers important in evaluating its services.

**SECTION III**

**MODEL CONTRACT**

**CEO REAL ESTATE  
OWNER'S REPRESENTATIVE  
TO THE  
COUNTY OF ORANGE  
FOR THE  
DANA POINT REVITALIZATION PROJECT**



**SECTION III: MODEL CONTRACT**

**MODEL CONTRACT**

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MODEL CONTRACT

## MODEL CONTRACT

**THIS CONTRACT**, hereinafter referred to as "CONTRACT" for purposes of identification hereby numbered «CONTRACT\_», and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

### BY AND BETWEEN

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

### AND

«COMPANY», a «STofINC» Corporation, hereinafter referred to as "A-E",

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

### RECITALS

**WHEREAS**, COUNTY requires professional services to accomplish projects and/or services ("PROJECTS/SERVICES") as described in «CONTRACT\_» Scope of Work for «PROJ\_NAME», hereinafter referred to as "Attachment A," attached hereto and incorporated herein by reference; and

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

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

### 1. GENERAL

#### 1.1. Retainer

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

1.1.2. A professional, duly registered in the State of California, who shall be assigned to PROJECTS/SERVICES and whose services are offered by A-E and accepted by COUNTY is «AE\_CONTACTCERTS».

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

a. N/A or TBD

1.1.4. Consultants/contractors may be substituted and/or added by mutual agreement of A-E and the Director, County of Orange, OC Public Works or his designee, hereinafter referred to as "DIRECTOR".

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

**1.2. Projects/Services**

**1.2.1. Description of PROJECTS/SERVICES**

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

**1.2.2. Design Criteria and Standards**

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

**1.2.3. Scheduling**

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

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

**1.3. Assistance by COUNTY STAFF**

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

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

**1.4. Term and Maximum Compensation**

**1.4.1.** The term of this CONTRACT is for TBD (TBD) years, commencing upon Board approval, with a maximum allowable compensation of TBD (\$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 \$100,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$100,000, whichever is less.

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

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

a) For failure to complete and secure approval of the first required submittal, there shall be no compensation.

- b) For failure to complete and secure approval of other authorized phases, A-E shall, upon completion of PROJECTS/SERVICES by others, be entitled to receive compensation based on approved work of PROJECTS/SERVICES not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by COUNTY of the non-approved work; provided, however, that if the cost to COUNTY to complete the CONTRACT exceeds the amount specified herein, A-E shall be liable to COUNTY for such excess costs attributable to A-E's breach of the CONTRACT.

## **2. LABOR**

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

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

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

### **2.2 Non-Discrimination**

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

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

### **2.3 Employee Eligibility Verification**

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

### **2.4 Independent Contractor**

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

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

**2.5 Conflict of Interest Contractor Personnel**

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

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

**2.6 Labor Code Notice**

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

**3. INSURANCE**

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

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

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

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

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

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

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

**A. Qualified Insurer**

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

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

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

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

**B. Required Coverage Forms**

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



C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage, which will state **As Required By Written Contract**.
  - b. A primary non-contributing endorsement using ISO Form CG 20 01 0413, or a form at least as broad evidencing that the A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against **the County of Orange, its elected and appointed officials, officers, employees and agents**, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
3. All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. A-E shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.
5. If A-E's Professional Liability policy is a "claims made" policy, A-E shall agree to maintain professional liability coverage for two (2) years following completion of CONTRACT.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
9. COUNTY expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
10. COUNTY shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable Certificates of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to

A-E, and COUNTY shall be entitled to all legal remedies.

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

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

**4.1 A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.**

**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, the County of Orange ("COUNTY"), their elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of A-E and COUNTY or COUNTY INDEMNITEES, A-E and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this CONTRACT.**

#### **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 CONTRACT, COUNTY shall have the right to terminate this CONTRACT upon ten (10) days written notice prior to the effective day of termination.
- 5.1.2** A-E shall have the opportunity to cure the alleged breach prior to termination.
- 5.1.3** In the event the alleged breach is not cured by A-E prior to termination, all work performed by A-E pursuant to this CONTRACT, which work has been reduced to plans or other documents, shall be made available to COUNTY.

### **5.2 Termination for Convenience**

- 5.2.1** Notwithstanding any other provision of the CONTRACT, COUNTY may at any time, and without cause, terminate this CONTRACT in whole or in part, upon not less than seven (7) calendar days' written notice to the A-E. Such termination shall be effected by delivery to the A-E of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.
- 5.2.2** A-E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY.
- 5.2.3** COUNTY shall pay the A-E for the Work completed prior to the effective date of the termination, and such payment shall be the A-E's sole remedy under this CONTRACT.
- 5.2.4** Under no circumstances will A-E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.
- 5.2.5** A-E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

### **5.3 Breach of Contract**

- 5.3.1** The failure of the A-E to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT, the COUNTY may:
- a) afford the A-E written notice of the breach and ten (10) calendar days or such shorter time

that may be specified in this CONTRACT within which to cure the breach;

- b) discontinue payment to the A-E for and during the period in which the A-E is in breach; and
- c) offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the COUNTY.

#### **5.4 Default**

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

#### **6. MISCELLANEOUS**

##### **6.1 Laws to be Observed**

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

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

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

## **6.3 Amendments**

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

## **6.4 Successors and Assigns**

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

## **6.5 Entirety**

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

## **6.6 Severability**

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

## **6.7 Binding Obligation**

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

## **6.8 Governing Law and Venue**

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

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

## **6.9 Child Support Enforcement Requirements**

**6.9.1** To comply with child support enforcement requirements of the COUNTY, within thirty (30) days of notification of selection for award of PROJECTS/SERVICES, A-E may be asked to complete and furnish to DIRECTOR the information required in County of Orange Child Support Enforcement Contract Certification.

**6.9.2** It is expressly understood that this data will be transmitted by COUNTY to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes.

## **6.10 Ownership of Documents**

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

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

## **6.11 Confidentiality**

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

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

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

## **6.12 Publication**

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

**6.12.2** The A-E agrees that it will not issue any news releases or make any contact with the media in

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

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

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

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

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

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

### **6.14 Notices**

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

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

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

For A-E:

«COMPANY»  
«ADDRESS»  
«CITY\_STATE\_ZIP»  
Attn: «CONTACT»  
Phone: «PHONE»  
E-mail: «EMAIL»

For COUNTY:

«COMPANY»  
«ADDRESS»  
«CITY\_STATE\_ZIP»  
Attn: «CONTACT»  
Phone: «PHONE»  
E-mail: «EMAIL»

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

### **6.15 Attorney's Fees**

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

### **6.16 Interpretation**

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

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

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

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

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

### **6.17 Headings**

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

### **6.18 Acceptance**

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



## **6.19 Changes**

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

## **6.20 Assignment**

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

## **6.21 Changes in Ownership**

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

## **6.22 Force Majeure**

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

## **6.23 Calendar Days**

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

## **6.24 Title to Data**

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

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

## **6.25 Availability of Funds**

**6.25.1** The obligation of COUNTY is subject to the availability of funds appropriated for this purpose,

and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

**6.26 Contingency of Funding**

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

**6.27 Contract Construction**

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

**6.28 Conflicts of Interest**

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

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

**6.29 Usage**

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

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

«COMPANY»,  
a «STofINC» Corporation,

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

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

\_\_\_\_\_  
Print Name & Title

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

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

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

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

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

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

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

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

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

## ATTACHMENT A SCOPE OF SERVICES

### A. BACKGROUND

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

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

The County is proposing to revitalize and redevelop portions of the Harbor by entering into a Public-Private Partnership (through a master ground lease) with a real estate development team ("Development Team") with sufficient experience, financial resources, and personnel to design, permit, fund, construct, renovate, market, operate, manage, and maintain portions of the Harbor, both on land and in the water. As a part of this process, the County will require that certain areas of the Harbor be demolished and reconstructed or refurbished consistent with the Dana Point Harbor Revitalization Plan ("DPH Revitalization Plan").

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

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

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

The County is in the process of selecting a Development Team through a two-step solicitation process. The first step consisted of releasing a Request for Qualifications to solicit Statements of Qualifications ("SOQ"). (RFQ: <http://ocdph.com/revitalization/rfq>). As a result of this solicitation, three SOQs were received, evaluated, scored and ranked. Based on the rankings, a short-list of qualified Development Teams was developed, and each was invited to participate in step-two, the Request for Proposals ("Development RFP"). On October 19, 2016 the Development RFP was released to the short-list of qualified development teams with a due date of May 4, 2017.

(RFP:<http://ocparks.com/beaches/dana/news/details?NewsID=4158&TargetID=67>)

Based on a careful review and thorough consideration of the responses to the Development RFP, it is anticipated that the County will choose a Development Team to negotiate the terms of an option and long-term lease (respectively, "Option" and "Lease"), which will allow the selected Development Team to execute a project consistent with the DPH Revitalization Plan. The selected Development Team's proposal to plan,

entitle, design, permit, fund, construct, lease, manage, and operate the Harbor will be the Dana Point Harbor Revitalization Project (the "DPH Revitalization Project" or "Project").

## **B. PREMISE**

It is anticipated that the following project areas\* will become the responsibility of the Lessee Development Team.

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

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

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

- i. 136 Rooms
- ii. Function/Meeting – 2,000 sq. ft.
- iii. Fitness/Health Center – 450 sq. ft.

### **3. Marinas** (2,409 Boat Slips, 42 Guest Boat Slips) include:

- i. West Basin Marina
  - a. Land: 8.6 acres/Water: 27.5 acres
  - b. 982 Boat Slips
  - c. 42 Guest Boat Slips
- ii. East Basin Marina
  - a. Land: 11.9 acres/Water: 42.2 acres
  - b. 1,427 Boat Slips

### **4. Parking**

- i. 3,962 Parking Spaces

### **5. Landscaping/Common Area Amenities**

- i. Island landscaping and public park amenities (e.g. shelters and restrooms)
- ii. Puerto Place landscaping and public park amenities

### **6. Direct County Tenant Leases**

- i. Dana Point Fuel Docks
- ii. Dana Point Shipyard
- iii. Dana Point Yacht Club
- iv. Dolphin Safari
- v. Pacific Asian Enterprises dba Nordhavn Yachts

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

## C. SCOPE OF REPRESENTATIVE SERVICES

The County is interested in working with a qualified firm that has the expertise to provide the Representative Services, as described below, for the DPH Revitalization Project.

The owner's representative/project manager/construction monitor ("Owner's Representative") shall serve as the County's designated representative for the DPH Revitalization Project and provide Representative Services for all construction phase activities, as well as, the document submission, procurement, commissioning, and closeout processes of the Project. The Owner's Representative Services shall include optimizing the use of available funds, managing an on-time construction schedule, avoiding delays and disputes, and various administrative duties. More specifically, the Owner's Representative Services shall include the following phases or "tasks":

### **Task 1 - Pre-Selection Support**

- 1) Assist with Option and Lease negotiations
- 2) Assist with project related meetings, as directed by County

### **Task 2 - Overall Project Management**

- 1) Monitor Development Team's compliance with the terms and conditions of the Option and Lease(s)
- 2) Develop and manage project-specific procedures for communications, administration, document management, issue and resolution tracking, and warranty callback management
- 3) Facilitate communication between County, the, Development Team and the various Harbor stakeholders
- 4) Provide on-site management, as directed by County
- 5) All major project cost estimates must be reviewed by an independent third-party cost estimating firm managed by the Owner's Representative and approved by the County.
- 6) Throughout the course of the Project, advise and make recommendations for improving efficiencies, identify savings opportunities, or provide service improvements
- 7) Meetings
  - a. Coordinate and conduct or attend, as required, Project related meetings including all pre-proposal and procurement meetings, pre-construction meetings, construction meetings, and closeout/punch list meetings
  - b. Maintain all meeting notes and action items with follow-up
  - c. Other duties related to these scheduled meetings, as assigned by the County

### **Task 3 - Design Review / Regulatory Agency Coordination**

- 1) Oversee design services to ensure compatibility with governing agency requirements, coordinate code compliance design review, and ensure compliance with the Project schedule
- 2) Assist with design cost reviews and advise the County on value engineering and/or cost reduction opportunities
- 3) Review construction documents for constructability, completeness, and Lease and permit compliance
- 4) Coordinate regulatory reviews
- 5) Review and recommend A/E payment requests and contract modifications

#### **Task 4 - Construction Phase Oversight**

- 1) Coordinate the activities and services of the Development Team and other consultants to ensure compliance with Project scope and the Lease
- 2) Provide construction monitoring and quality control, contract compliance, budget and schedule monitoring, submittal and shop drawing reviews, track information requests and responses, coordinate inspections, and prepare monthly progress report
- 3) Oversee public bidding and buyout of subcontractor scopes of work per California Public Contract Code
- 4) Monitor compliance with the Final Environmental Impact Report Mitigation Monitoring and Reporting Program
- 5) Review contractor payment requests
- 6) Ensure Development Team compliance with safety plan

#### **Task 5 - Recordkeeping**

- 1) Keep and maintain records showing the progress of and changes in the Project during its construction
- 2) Keep a record of all proposal requests from the architect, change order Proposals from the general contractor, and executed change orders
- 3) Maintain copies of the following:
  - a. All project related contract documents (addenda, contracts, drawings, specifications, change orders, proposed change orders, request for clarification, construction change authorizations, A/E's supplemental instructions, etc.)
  - b. Names and contact information for contractors, sub-contractors, and principal suppliers
  - c. Shop drawings
  - d. Supplementary drawings
  - e. Samples and product data
  - f. County's purchases, including material and equipment
  - g. Color boards, schedules and samples
  - h. Correspondence and reports of site conferences
  - i. Contractor's Applications For Payment
  - j. Running list of discrepancies/deficiencies and dates
  - k. Running list of unresolved issues
  - l. A/E punch lists with date of issue indicated on each
  - m. Any other documents & revisions resulting from issues concerning the contract or work
  - n. Maintenance and operating manuals and instructions when received from Contractor
  - o. All meeting minutes
  - p. Weekly reports

#### **Task 6 - Scheduling Reviews / Recommendations**

- 1) Review the Development Team's detailed schedule and advise the County on the progress and/or construction scheduling issues. Monitor the schedule, notify the County of any slippage in critical

- path time, make recommendations on accepting the Development Team's proposed schedule recovery plan, and maintain an annotated copy of the schedule that reflects actual progress
- 2) Maintain a copy of the Project schedule, which shows work to date, and any changes made in the schedule. Where a schedule shows early/late start and finish dates for various activities, note actual dates of each occurrence. Make recommendations to the County as appropriate
  - 3) Confirm that changes required by approved change orders are incorporated in the work at a time deemed appropriate by the Development Team, and are reflected in the Development Team's progress schedule

#### **Task 7 - Budget Oversight and Review of Payments**

- 1) Report on project cost, making recommendations for budget adherence
- 2) Provide Project budget and variance reporting
- 3) Verify invoices for on-site tests/site visits of independent testing entities
- 4) Review applications for payment & certificates of payment issued by the A/E. Advise the County whether they accurately represent progress of the work and values of each line item in the schedule of values. Verify that stated quantities of stored materials are accurate. Based on such review and verification, make recommendations to the County

#### **Task 8 - Post-Construction Services**

- 1) Coordinate post-construction activities including testing/commissioning of all major components and systems
- 2) Verify Project is ready for substantial completion inspection prior to actual inspection
- 3) Conduct substantial completion inspection and prepare "punch list"
- 4) Conduct final inspection
- 5) Ensure all required warranties, guarantees, operating manuals, spare parts, and training documentation are submitted and provided to the County

#### **Task 9 – Scope / Schedule / Budget Change Management**

- 1) Review change orders and evaluate
- 2) Assist with identification of appropriate changes in scope
- 3) Assist with validating impact of changes including cost and time impacts to the project
- 4) Manage documentation of changes
- 5) Verify all change orders are complete
- 6) Monitor Development Team's as-built drawings

#### **Task 10 - Project Closeout and Warranty Phase**

- 1) Provide/manage/coordinate closeout activities including status reports, record document preparation, building commissioning, and warranty management
- 2) Assist with the transition from construction to an operational facility, including document management and retention, equipment and service data, operational and maintenance procedures
- 3) Provide warranty services



#### **D. LIMITATIONS OF AUTHORITY**

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

#### **E. NO GUARANTEE OF WORK / AUTHORIZATION OF TASKS**

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

**ATTACHMENT B  
COST/COMPENSATION**

- I. COMPENSATION:** This is a fixed-fee usage CONTRACT between COUNTY and A-E for «PROJ\_NAME» as set forth in Attachment A, "Scope of Work".

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

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

<<TBD>> (to be inserted upon negotiations)

**Total CONTRACT Amount Shall Not Exceed: \$TBD** (to be inserted upon negotiations)

- 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.

- b) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- c) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

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

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

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

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

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

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

Invoices and support documentation are to be forwarded to:

TBA

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**

**(Complete and submit as #2.A.1., in Part 3 of Section II "Response Requirements")**

**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 COUNTY.**

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

**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.

Company Name & Address	Contact Name and Telephone Number	Project Function