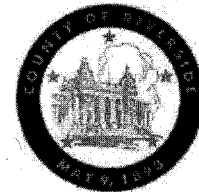


**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM  
3.17  
(ID # 8168)

**MEETING DATE:**

Tuesday, December 11, 2018

**FROM :** ECONOMIC DEVELOPMENT AGENCY (EDA) AND RIVERSIDE UNIVERSITY HEALTH SYSTEM :

**SUBJECT:** ECONOMIC DEVELOPMENT AGENCY (EDA) AND RIVERSIDE UNIVERSITY HEALTH SYSTEM: Riverside University Health System Emergency Department Expansion and Remodel Project - Approval of Revised Project Budget, Approval of Professional Services Agreement for OSHPD Inspections Services with MKH Testing and Inspection, Inc., Approval of Second Amendment to the Professional Services Agreement for Construction Management Services for Kitchell CEM, Inc., and First Amendment to the Professional Services Agreement for Material Testing Services for MTGL, Inc., District 5. [\$1,718,000 – RUHS Enterprise Fund 40050 - 100%]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve an increase to the project budget in the amount of \$1,718,000 for a revised project budget of \$14,492,578 for the Riverside University Health System (RUHS) Emergency Department (ED) Expansion and Remodel Project (Project);
2. Authorize the use of RUHS Enterprise Fund 40050 for the Project, including reimbursement to the Economic Development Agency (EDA) for incurred project related expenses;

**ACTION:** Policy, CIP

Robert Field, Assistant County Executive Officer/ECD

11/29/2018

Jennifer Cruikshank, Chief Executive Officer - Health System

11/29/2018

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Tavaglione, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None  
Date: December 11, 2018  
xc: EDA, RUHS, Purchasing

Kecia Harper-Ihem  
Clerk of the Board  
By   
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

**RECOMMENDED MOTION:** That the Board of Supervisors:

3. Approve the attached Professional Services Agreement between the County of Riverside (County) and MKH Testing and Inspection, Inc., (MKH) of Brea, California, for Office of Statewide Health Planning and Development (OSHPD) inspection services for the Project, in the amount of \$143,620, and authorize the Chairman of the Board (Chairman) to execute the agreement on behalf of the County;
4. Approve the attached Second Amendment to the Professional Services Agreement for construction management services between the County and Kitchell CEM, Inc. (Kitchell) in the increased amount of \$605,800 for a total contract amount of \$1,696,345, and authorize the Chairman to execute the amendment on behalf of the County;
5. Approve the attached First Amendment to the Professional Services Agreement for material testing services between the County and MTGL, Inc. (MTGL) in the increased amount of \$120,000 for a total contract amount of \$461,438, and authorize the Chairman to execute the amendment on behalf of the County;
6. Authorize the Assistant County Executive Officer/ECD to administer the Professional Services Agreement with MKH and Amendments for Kitchell and MTGL in accordance with applicable Board policies; and
7. Authorize the Purchasing Department to execute consultant services agreements for consultants that have been pre-qualified for services up to \$100,000, per fiscal year, in accordance with applicable Board policies for this project.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 1,718,000	\$ 0	\$ 1,718,000	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> RUHS Enterprise Fund 40050 – 100%			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 2018/19	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

Summary

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

On August 23, 2016, Item 3-34, the Board of Supervisors (Board) approved the plans and specifications for bidding and the preliminary project budget for the RUHS ED Expansion and Remodel project in the amount of \$12,774,578 with an anticipated 12 month construction duration. Prior to starting the Project, RUHS did not have the swing space available for the occupants causing a three month delay until the new space could be constructed and the staff moved. During the remodel of the existing hospital, numerous concealed and non-compliant conditions were encountered which required modifications to the design to bring it up to current code; resulting in delays for the necessary revisions to the plans to go through the review and approval process with OSHPD. This has extended the construction duration of the project to an anticipated additional 15 months.

On July 12, 2016, Item 3-11, the Board approved a pre-qualified list of OSHPD Inspection firms. Due to their experience and successful completion of similar projects and familiarity with the project, EDA recommends moving forward with MKH's agreement in the amount of \$143,620 for the project's OSHPD inspection services.

On March 29, 2016, Item 3-42, the Board approved a construction management services agreement with Kitchell in the amount of \$1,275,795. On August 23, 2016, Item 3-34, the Board approved Amendment No. 1 to Kitchell in the credit amount of (\$185,250) for changing the delivery method from CM multi-prime to CM agency. The Second Amendment to the agreement will compensate Kitchell in the not-to-exceed amount of \$605,800 for a revised contract value of \$1,696,345 to provide construction management services through successful completion of the project.

On March 7, 2017, Item 3.24, the Board approved a professional services agreement with MTGL for inspection and material testing services in the amount of \$341,438. The First Amendment to the agreement will compensate MTGL in the not-to-exceed amount of \$120,000 for a revised contract value of \$461,438 to provide the additional inspection and material testing services through successful completion of the project.

EDA is seeking Board approval for a project budget increase of \$1,718,000, from \$12,774,578 to \$14,492,578 to the Project. The additional monies will cover the Amendments for Kitchell and MTGL, and other remaining project related obligations to successfully complete the project.

**Impact on Residents and Businesses**

The RUHS ED Expansion and Remodel project will improve wait times and direct access to a Level I Trauma facility for patients of Riverside County. This project will improve patient care for emergency services as a result of these improvements.

**Contract History for Kitchell CEM, Inc.**

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>PERCENT</b>	<b>DESCRIPTION OF SERVICE</b>
Base Service Contract	1,275,795	0.00 %	Original Agreement with Kitchell
Amendment No. 1	(185,250)	(14.52) %	Reduction of scope of work in the delivery method from multi-prime to agency.
Amendment No. 2	605,800	47.48 %	Extended construction management services due to revised project schedule.
<b>TOTAL</b>	<b>\$ 1,696,345</b>	<b>32.96 %</b>	

**Contract History for MTGL, Inc.**

<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>PERCENT</b>	<b>DESCRIPTION OF SERVICE</b>
Base Service Contract	341,438	0.00 %	Original Agreement with MTGL
Amendment No. 1	120,000	35.15 %	Extended material testing services due to revised project schedule.
<b>TOTAL</b>	<b>\$ 461,438</b>	<b>35.15 %</b>	

**Additional Fiscal Information**

The approximate allocation of the project budget increase is as follows:

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

<b>PROJECT BUDGET LINE ITEMS</b>	<b>CATEGORY</b>	<b>PROJECT BUDGET</b>	<b>PROJECT BUDGET ADJUSTMENT</b>	<b>REVISED PROJECT BUDGET</b>
Architectural Design	1	994,033	284,480	1,278,513
Construction Management	2	1,090,545	605,800	1,696,345
Construction Contract	3	8,770,000	0	8,770,000
Offsite Construction	4	0	0	0
Project Management	5	250,000	200,000	450,000
Fixtures, Furnishings, Equipment	6	400,000	(279,280)	120,720
Other Soft Costs / Specialty Consultants	7	500,000	907,000	1,407,000
Project Contingency	8	770,000	0	770,000
Minor Construction	9	0	0	0
<b>Revised Project Budget</b>		<b>\$ 12,774,578</b>	<b>\$ 1,718,000</b>	<b>\$ 14,492,578</b>


The Board previously approved a project budget in the amount of \$12,774,578 on August 23, 2016 (Item 3-34). This Board action will increase the project budget by \$1,718,000 for a revised project budget of \$14,492,578 which is 100% funded through RUHS Enterprise Fund 40050 and will be expended in FY 2018/19.


**Attachments:**


- Professional Services Agreement for MKH Testing and Inspection, Inc.
- Second Amendment for Kitchell CEM, Inc.
- First Amendment for MTGL, Inc.


RF:HM:VC:SP:RM;mg                      FM08430005088                      8168-13919  
S:\Project Management Office\FORM 11'S\Form 11's\_In Process\8168 - 13919\_D4 - 005088 - RUHS ED Rmdl Proj - Bdgt Rev, PSA-  
MKH, Amend 2 Kitchell & Amend 1 MTGL\_110618.doc

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

  
Kerini Basika, Principal Management Analyst 12/3/2018

  
Ivan Chand, Deputy County Executive Officer 12/3/2018

  
Teresa Summers, Director of Purchasing 11/1/2018

  
Gregory V. Priamos, Director County Counsel 11/30/2018

1                   **FIRST AMENDMENT TO AGREEMENT FOR OSHPD, CONSTRUCTION**  
2                                   **INSPECTION,**  
3                                   **SOIL & MATERIAL TESTING SERVICES**  
4                   **BY AND BETWEEN THE COUNTY OF RIVERSIDE AND MTGL, INC. FOR**  
5                                   **RIVERSIDE UNIVERSITY HEALTH SYSTEM EMERGENCY DEPARTMENT**  
6                                   **EXPANSION**

7                   **THIS FIRST AMENDMENT** is entered into by and between the COUNTY OF  
8 RIVERSIDE, ("COUNTY"), and MTGL, INC., (herein referred to as "CONSULTANT"),  
9 regarding the Agreement for OSHPD, Construction Inspection, Soil and Material Testing Services  
10 first entered into on March 7, 2017.

11                   **NOW, THEREFORE,** in consideration of the mutual covenants contained herein and  
12 providing that all other sections not amended remain in full force and effect, the parties hereto  
13 agree to amend the Agreement as follows:

14 I.           ARTICLE I DESIGNATED CONTACTS is hereby amended to read:

15                   The CONSULTANT PROJECT MANAGER for CONSULTANT shall be Steven Koch.

16                   The COUNTY PROJECT MANAGER for COUNTY shall be Rebecca McCray.

17  
18 II.          ARTICLE II PROJECT DEFINITION is hereby amended in the third sentence to read:

19                   CONSULTANT shall furnish all technical and professional services including labor,  
20 material, equipment, transportation, supervision, and expertise to fully and adequately  
21 perform and complete the covenants set forth in Exhibit A and the attached Exhibit A-1,  
22 consisting of 1 page and incorporated herein.

23  
24 III.         ARTICLE III COOPERATIVE AGENCIES under Section C. CONSULTANT Staff  
25 Project Manager is hereby amended to read Steven Koch.

26  
27 IV.         ARTICLE V PERFORMANCE under Section A. Performance Period, Sub-Section 1. is  
28 hereby amended to read: ..."the term of this Agreement shall be extended from 400

DEC 11 2018 3.17

1 calendar days to a new project completion date of August 30, 2019.” Subsection 3. Is  
2 hereby amended to read: CONSULTANT shall perform PROJECT services in accordance  
3 with the provisions set forth in Exhibit A and the attached Exhibit A-1, consisting of 1 page  
4 and incorporated herein.  
5

6 V. ARTICLE VI COMPENSATION under Section B. Basis of Compensation, Sub-Section  
7 1. First paragraph is hereby amended to read: COUNTY shall pay the CONSULTANT for  
8 services performed in accordance with the Scope of Services set forth in Exhibit A and the  
9 attached Exhibit A-1. The total amount of the original Agreement was Three Hundred  
10 Forty-One Thousand Four Hundred Thirty-Eight Dollars (\$341,438). The additional  
11 compensation under this First Amendment shall not exceed the sum of One Hundred  
12 Twenty Thousand Dollars (\$120,000) which includes an allowance of Ten Thousand  
13 Dollars (\$10,000) to be used at the County’s discretion for unanticipated costs. The new  
14 not to exceed total is Four Hundred Sixty-One Thousand Four Hundred Thirty-Eight  
15 Dollars (\$461,438).  
16

17 VI. All other terms and conditions of the agreement shall remain in full force and effect.  
18

19 [REMAINDER OF PAGE LEFT BLANK]  
20  
21  
22  
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24  
25  
26  
27  
28



1 IN WITNESS WHEREOF, the Parties have caused their duly authorized representative to execute  
2 this Agreement.

3  
4 "COUNTY"

5 COUNTY OF RIVERSIDE

6 By: 

CHUCK WASHINGTON

7 Chairman, Board of Supervisors

8  
9  
10 ATTEST:

11 Kecia Harper-Ihem

12 Clerk of the Board

13  
14 By: 

15 Deputy

16  
17 (SEAL)

18  
19  
20  
21  
22 APPROVED AS TO FORM:

23 Gregory P. Priamos

24 County Counsel

25 By: 

26 Synthia M. Gunzel

27 Chief Deputy County Counsel

"CONSULTANT"

MTGL, Inc.

By: 

Michael Landon

Title: President

Federal Tax I.D. No. 33-0580168

Address: 14467 Meridian Parkway, Bldg 2A


Riverside, CA 92518



1 IN WITNESS HEREOF, the parties hereto have caused their duly authorized representatives to execute  
2 this Second Amendment.

3  
4 "COUNTY"

5 COUNTY OF RIVERSIDE

6  
7 By: 

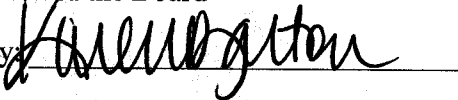
8 Chairman CHUCK WASHINGTON

9 Board of Supervisors

10  
11 ATTEST:

12 KECIA HARPER-IHEM

13 Clerk of the Board

14 By: 

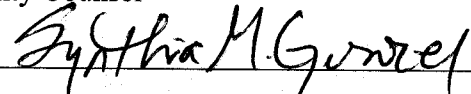
15 Deputy

16  
17 (SEAL)

18  
19  
20  
21 APPROVED AS TO FORM:

22 GREGORY P. PRIAMOS

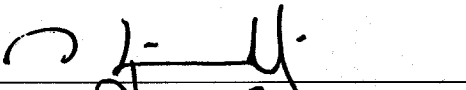
23 County Counsel

24 By: 

25 Cynthia M. Gunzel, Chief Deputy County Counsel

CONSULTANT:

KITCHELL CEM, INC.

By: 

Printed Name: DAVID GIANELLI

Address: 2400 VENTURE OAKS, STE. 500  
SACRAMENTO, CA 95833

Revised EXHIBIT "F" per Amendment #2

**MASTER PROJECT SCHEDULE**

<u>Description</u>	<u>Date</u>
1. Complete 100% CD Phase, Plan Check Approval	April 2016
2. BOS Approval to Bid	May 2016
3. Begin Bid Phase	May 2016
4. Bids Due	June 2016
5. Notice of Intent to Award (NOI)	July 2016
6. BOS – Bid Award	August 2016
7. Issue Notice to Proceed (NTP)	February 2017
8. Substantial Completion	June 2019
9. Final Completion	August 2019

## Revised EXHIBIT "N" Per Amendment #2

### CONSTRUCTION MANAGER'S STAFFING FEE SCHEDULE

Kitchell CEM, Inc.  
Emergency Department Renovation & Expansion  
Construction Management Fee

Kitchell proposes the following fee for the above referenced project. This fee is a professional services fee based upon the hourly rates set forth in the contract and the project schedule.

PreConstruction Fee	\$ 171,200
Construction Management Fee	\$1,430,720
General Conditions Fee	\$ 44,985
Reimbursable Expenses	\$ 30,000
Allowance for Add Services	\$ 19,440
<b>Total Fee</b>	<b>\$1,696,345</b>

#### Construction Management Fee Schedule for the additional duration:

Staffing	Construction and Closeout Duration - 12 Additional Months													Total	Hourly	Estimated
														Hours	Rates	Staffing Fees
Project Manager (Mike W.)	160	184	176	168	184	160	168	176	184	160	184	176	2080	\$155	\$322,400	
Project Engineer (Ernesto G.)	160	184	176	168	184	160	168	176	184	160	184	176	2080	\$110	\$228,800	
Sr. Project Manager	15	15	15	15	15	15	15	15	15	15	15	15	180	\$160	\$28,800	

Recommended services as an allowance														Total	Hourly	Estimated
Estimator	0	0	0	0	0	0	0	0	0	0	0	0	0	\$125	\$0	
Scheduler	12	12	12	12	12	12	12	12	12	12	12	12	144	\$135	\$19,440	
													<b>Total Allowance</b>		<b>\$19,440</b>	

Non-Labor General Conditions/Reimbursables:				
Description	Duration	# of Months	Unit Costs	Total Costs
Trailer (Cleaning Service)	Month(s)	12	\$250	\$3000
Drinking Water	Each	12	\$80	\$960
Office Supplies	Month(s)	12	\$200	\$2400
				<b>Subtotal: \$6,360</b>

Totals	
Subtotal Staffing for PM	\$580,000
Subtotal General Conditions	\$6,360
Allowance for Additional Services	\$19,440
<b>Total Proposed Cost</b>	<b>\$605,800</b>

1 PROFESSIONAL SERVICES AGREEMENT  
2 For THE RIVERSIDE UNIVERSITY HEALTH SYSTEM  
3 EMERGENCY DEPARTMENT REMODEL PROJECT  
4 FM08430005088

5 This Agreement is made and entered as of the date of the last signature on the signature page of  
6 this contract by and between MKH TESTING AND INSPECTION, INC., a California  
7 corporation, (herein referred to as "CONSULTANT"), and the COUNTY OF RIVERSIDE, a  
8 political subdivision of the State of California, (herein referred to as "COUNTY").

9 WHEREAS, Government Code Section 31000 et seq. authorizes the COUNTY to  
10 contract for services with a person who is specially trained and experienced, and who is competent  
11 to perform the special services required; and

12 WHEREAS, CONSULTANT has the expertise, special skills, knowledge and  
13 experience to perform the duties set out herein.

14 NOW THEREFORE, in consideration of the mutual covenants contained herein,  
15 the parties hereto agree as follows:

16 1. SCOPE OF SERVICES: CONSULTANT shall perform all services and other  
17 activities necessary to provide INSPECTOR OF RECORD (IOR) SERVICES in order to ensure  
18 all work performed for the project, meet State Health Planning and Development (OSHPD)  
19 requirements as described in further detail in Exhibit "A" for the Project entitled: THE  
20 RIVERSIDE UNIVERSITY HEALTH SYSTEM (RUHS) EMERGENCY DEPARTMENT (ED)  
21 REMODEL PROJECT. CONSULTANT shall provide all services in accordance with this  
22 Agreement and as outlined and specified in Exhibit "A", consisting of one (1) page(s), attached  
23 hereto and by this reference incorporated herein.

24 1.1 CONSULTANT represents and maintains that it is skilled in the professional  
25 calling necessary to perform all services, duties and obligations required by this Agreement  
26 to fully and adequately complete the project. CONSULTANT shall perform the services  
27 and duties in conformance to and consistent with the standards generally recognized as  
28 being employed by professionals in the same discipline in the State of California.

1 CONSULTANT further represents and warrants to the COUNTY that it has all licenses,  
2 permits, qualifications and approvals of whatever nature are legally required to practice its  
3 profession. CONSULTANT further represents that it shall keep all such licenses and  
4 approvals in effect during the term of this Agreement.

5 2. PERIOD OF PERFORMANCE: CONSULTANT shall commence performance of  
6 services within one (1) calendar day after execution of this Agreement, and shall diligently perform  
7 the services to full completion of the Project as required and in accordance with the scheduled  
8 Project completion date of **August 30, 2019**, unless sooner terminated as specified in Paragraph  
9 8, or extended as provided in Paragraph 13. All applicable indemnification provisions in this  
10 Agreement shall remain in effect following the termination of this Agreement.

11 3. COMPENSATION: The COUNTY shall pay the CONSULTANT for services  
12 performed and expenses incurred as follows:

13 3.1 COUNTY shall pay to CONSULTANT for services performed in  
14 accordance with the Scope of Services set forth in Exhibit "A". The total amount  
15 of compensation paid to CONSULTANT under this Agreement shall not exceed  
16 the maximum of **ONE HUNDRED FORTY THREE THOUSAND, SIX**  
17 **HUNDRED TWENTY DOLLARS (\$143,620)** per Exhibit A, unless a written  
18 amendment to the Agreement is executed by both parties prior to performance of  
19 additional services.

20 3.2 Said compensation shall be paid in accordance with an invoice submitted to  
21 COUNTY by CONSULTANT within fifteen (15) days from the last day of each calendar  
22 month, and COUNTY shall pay the invoice within thirty (30) working days from the date  
23 of receipt of the invoice.

24 3.3 Unless otherwise stated in Exhibit "A", the basis for the monthly invoice  
25 and payment thereon shall be on an hourly basis to be billed monthly.

26 3.4 Labor Code and Prevailing Wages Rates

27 3.4.1 Certain Classifications of Labor under this contract are subject to  
28 prevailing wage requirements. It is anticipated that survey and/or soils

1 testing work will or may be performed which classifications are subject to  
2 payment of prevailing wage when performed as pre-construction or  
3 construction activities on a public works project.

4 3.4.2 Reference is made to Chapter 1, Part 7, Division 2 of the California  
5 Labor Code (commencing with Section 1720). By this reference said  
6 Chapter 1 is incorporated herein with like effect as if it were here set forth  
7 in full. The parties recognize that said Chapter 1 deals, among other things  
8 with discrimination, penalties and forfeitures, their disposition and  
9 enforcement, wages, working hours, and securing worker's compensation  
10 insurance and directly affect the method of prosecution of the work by  
11 CONSULTANT and subject it under certain conditions to penalties and  
12 forfeitures. Execution of the Agreement by the parties constitutes their  
13 agreement to abide by said Chapter 1, their stipulation as to all matters  
14 which they are required to stipulate as to by the provisions of said Chapter  
15 1, constitutes CONSULTANT'S certification that he is aware of the  
16 provisions of said Chapter 1 and will comply with them and further  
17 constitutes CONSULTANT'S certification as follows: "I am aware of the  
18 provisions of Section 3700 of the California Labor Code which require  
19 every employer to be insured against liability for worker's compensation  
20 or to undertake self-insurance in accordance with the provisions of that  
21 Code, and I will comply with such provisions before commencing the  
22 performance of the work of this contract."

23 3.4.3. Pursuant to Section 1773 of the Labor Code, the general prevailing  
24 wage rates, including the per diem wages applicable to the work, and for  
25 holiday and overtime work, including employer payments for health and  
26 welfare, pension, vacation, and similar purposes, in the county in which the  
27 work is to be done have been determined by the Director of the California  
28 Department of Industrial Relations. These wages are available from the



1 California Department of Industrial Relations' Internet website at  
2 <http://www.dir.ca.gov>, and are available at the main office of COUNTY.

3 4. INDEPENDENT CONTRACTOR: COUNTY retains CONSULTANT on an  
4 independent contractor basis. CONSULTANT is not, and shall not be considered to be in any  
5 manner, an employee, agent or representative of the COUNTY. CONSULTANT shall not be  
6 entitled to any benefits payable to employees of COUNTY including County Workers'  
7 Compensation benefits. COUNTY is not required to make any deductions from the compensation  
8 payable to CONSULTANT under this Agreement, and as an independent contractor,  
9 CONSULTANT hereby holds COUNTY harmless from any and all claims that may be made  
10 against COUNTY based upon any contention by any third party that an employer-employee  
11 relationship exists by reason of this Agreement.

12 Personnel performing any services under this Agreement on behalf of CONSULTANT  
13 shall at all times be under CONSULTANT'S exclusive direction and control. CONSULTANT  
14 shall pay all wages, salaries and other amounts due such personnel in connection with their  
15 performance of service and as required by law. CONSULTANT shall be responsible for all reports  
16 and obligations respecting such personnel, including but not limited to, social security taxes,  
17 income tax withholdings, unemployment insurance, and workers' compensation insurance.

18 5. CONSULTANT'S RESPONSIBILITY: It is understood that the CONSULTANT  
19 has the skills, experience and knowledge necessary to perform the services agreed to be performed  
20 under this Agreement, and that the COUNTY relies upon the CONSULTANT'S representations  
21 about its skills, experience and knowledge to perform the CONSULTANT'S services in a  
22 competent manner. Acceptance by the COUNTY of the services to be performed under this  
23 Agreement does not operate as a release of said CONSULTANT from responsibility for the work  
24 performed. It is further understood and agreed that the CONSULTANT is apprised of the scope  
25 of the work to be performed under this Agreement and the CONSULTANT agrees that said work  
26 can and shall be performed in a fully competent manner.

27 6. INDEMNITY AND HOLD HARMLESS – The CONSULTANT agrees to and  
28 shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Departments

1 and Special Districts, their respective directors, officers, Board of Supervisors, elected and  
2 appointed officials, employees, agents and representatives (hereinafter individually and  
3 collectively referred to as "Indemnitees") from all liability, including, but not limited to loss, suits,  
4 claims, demands, actions, or proceedings caused by any alleged or actual negligence, recklessness,  
5 willful misconduct, errors or omissions of CONSULTANT, its directors, officers, partners,  
6 employees, agents or representatives or any person or organization for whom CONSULTANT is  
7 responsible, arising out of or from the performance of services under this Agreement. To the extent  
8 a loss, suit, claim, demand, action, or proceeding is based on actual or alleged acts or omissions of  
9 CONSULTANT which are not design professional services, CONSULTANT shall indemnify  
10 Indemnitees whether or not CONSULTANT is negligent.

11 The duty to indemnify does not include loss, suits, claims, demands, actions, or  
12 proceedings caused by actual negligence of Indemnitees; however, any actual negligence of  
13 Indemnitees will only affect the duty to indemnify for the specific act found to be negligence, and  
14 will not preclude a duty to indemnify for any act or omission of CONSULTANT.

15 CONSULTANT shall defend and pay, at its sole expense, all costs and fees, including but  
16 not limited to attorney fees, cost of investigation, and defense, in any loss, suits, claims, demands,  
17 actions, or proceedings based or alleged to be based on any act or omission of CONSULTANT  
18 arising out of or from the performance of services under this contract. The duty to defend applies  
19 to any alleged or actual negligence, recklessness, willful misconduct, error or omission of  
20 CONSULTANT. The duty to defend shall apply whether or not CONSULTANT is a party to the  
21 lawsuit, and shall apply whether or not CONSULTANT is directly liable to the plaintiffs in the  
22 lawsuit. The duty to defend applies even if Indemnitees are alleged or found to be actively  
23 negligent, unless the act or omission at issue was caused by the sole active negligence of  
24 Indemnitees. The duty to defend however only applies to the acts or omissions of the  
25 CONSULTANT.

26 The specified insurance provisions and limits required in this contract shall in no way limit  
27 or circumscribe CONSULTANT'S obligations to indemnify and hold harmless Indemnitees from  
28 third party claims.

1 In the event there is conflict between the indemnity and defense provisions and California  
2 Civil Code Section 2782 and 2782.8, the indemnity and defense provisions shall be interpreted to  
3 comply with Civil Code sections 2782 and 2782.8.

4 7. INSURANCE: Without limiting or diminishing the CONSULTANT'S obligation  
5 to indemnify or hold the COUNTY harmless, CONSULTANT shall procure and maintain or cause  
6 to be maintained, at its sole cost and expense, the following insurance coverage during the term of  
7 this Agreement. As respects to the insurance section only, the COUNTY herein refers to the  
8 County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective  
9 directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or  
10 representatives as Additional Insureds.

11 A. Workers' Compensation:

12 If the CONSULTANT has employees as defined by the State of California, the  
13 CONSULTANT shall maintain statutory Workers' Compensation Insurance  
14 (Coverage A) as prescribed by the laws of the State of California. Policy shall  
15 include Employers' Liability (Coverage B) including Occupational Disease with  
16 limits not less than \$1,000,000 per person per accident. The policy shall be  
17 endorsed to waive subrogation in favor of The County of Riverside.

18 B. Commercial General Liability:

19 Commercial General Liability insurance coverage, including but not limited to,  
20 premises liability, unmodified contractual liability, products and completed  
21 operations liability, personal and advertising injury, and cross liability coverage,  
22 covering claims which may arise from or out of CONSULTANT'S performance of  
23 its obligations hereunder. Policy shall name the COUNTY as Additional Insured.  
24 Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined  
25 single limit. If such insurance contains a general aggregate limit, it shall apply  
26 separately to this Agreement or be no less than two (2) times the occurrence limit.

27 C. Vehicle Liability:

28 If vehicles or mobile equipment are used in the performance of the obligations

1 under this Agreement, then CONSULTANT shall maintain liability insurance for  
2 all owned, non-owned or hired vehicles so used in an amount not less than  
3 \$1,000,000 per occurrence combined single limit. If such insurance contains a  
4 general aggregate limit, it shall apply separately to this Agreement or be no less  
5 than two (2) times the occurrence limit. Policy shall name the COUNTY as  
6 Additional Insureds.

7 **D. Professional Liability:**

8 CONSULTANT shall maintain Professional Liability Insurance providing  
9 coverage for the CONSULTANT'S performance of work included within this  
10 Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and  
11 \$2,000,000 annual aggregate. If CONSULTANT'S Professional Liability  
12 Insurance is written on a claims made basis rather than an occurrence basis, such  
13 insurance shall continue through the term of this Agreement and CONSULTANT  
14 shall purchase at his sole expense either 1) an Extended Reporting Endorsement  
15 (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with  
16 a retroactive date back to the date of, or prior to, the inception of this Agreement;  
17 or, 3) demonstrate through Certificates of Insurance that CONSULTANT has  
18 maintained continuous coverage with the same or original insurer. Coverage  
19 provided under items; 1), 2) or 3) will continue as long as the law allows.

20 **E. General Insurance Provisions - All lines:**

21 1) Any insurance carrier providing insurance coverage hereunder shall be  
22 admitted to the State of California and have an A M BEST rating of not less than  
23 A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk  
24 Manager. If the County's Risk Manager waives a requirement for a particular  
25 insurer such waiver is only valid for that specific insurer and only for one policy  
26 term.

27 2) The CONSULTANT must declare its insurance self-insured retention for  
28 each coverage required herein. If any such self-insured retention exceed \$500,000

1 per occurrence each such retention shall have the prior written consent of the  
2 County Risk Manager before the commencement of operations under this  
3 Agreement. Upon notification of self-insured retention unacceptable to the  
4 COUNTY, and at the election of the County's Risk Manager, CONSULTANT'S  
5 carriers shall either; 1) reduce or eliminate such self-insured retention as respects  
6 this Agreement with the COUNTY, or 2) procure a bond which guarantees payment  
7 of losses and related investigations, claims administration, and defense costs and  
8 expenses.

9 3) CONSULTANT shall cause CONSULTANT'S insurance carrier(s) to  
10 furnish the County of Riverside with either 1) a properly executed original  
11 Certificate(s) of Insurance and certified original copies of Endorsements effecting  
12 coverage as required herein, and 2) if requested to do so orally or in writing by the  
13 County Risk Manager, provide original Certified copies of policies including all  
14 Endorsements and all attachments thereto, showing such insurance is in full force  
15 and effect. Further, said Certificate(s) shall contain the covenant of the insurance  
16 agent/producer that thirty (30) days written notice shall be given to the County of  
17 Riverside prior to cancellation of such insurance except ten (10) days for  
18 cancellation due to nonpayment. In the event of a material modification,  
19 cancellation, expiration, or reduction in coverage, this Agreement shall terminate  
20 forthwith, unless the County of Riverside receives, prior to such effective date,  
21 another properly executed original Certificate of Insurance and original copies of  
22 endorsements or certified copies of the policies, including all endorsements and  
23 attachments thereto evidencing coverage's set forth herein and the insurance  
24 required herein is in full force and effect. ***CONSULTANT shall not commence***  
25 ***operations until the COUNTY has been furnished original Certificate (s) of***  
26 ***Insurance and certified original copies of endorsements and if requested, review***  
27 ***original of the policies of insurance including all endorsements and any and all***  
28 ***other attachments as required in this Section. An individual authorized by the***

1            *insurance carrier to do so on its behalf shall sign the original endorsements for*  
2            *each policy and the Certificate of Insurance. Upon COUNTY'S request,*  
3            *CONSULTANT shall make available for inspection by County Risk Manager, at*  
4            *a mutually agreeable location, copies of CONSULTANT'S insurance policies.*

5            4) It is understood and agreed to by the parties hereto that the  
6            CONSULTANT'S insurance shall be construed as primary insurance, and the  
7            COUNTY'S insurance/or deductible and/or self-insured retentions or self-insured  
8            program shall not be construed as contributory.

9            5) If, during the term of this Agreement or any extension thereof, there is a  
10           material change in the scope of services; or, there is a material change in the  
11           equipment to be used in the performance in the scope of work; or, the term of this  
12           Agreement, including any extension thereof, exceeds five (5) years; the COUNTY  
13           reserves the right to adjust the types of insurance and the monetary limits of liability  
14           required under this Agreement, if in the County Risk Manager's reasonable  
15           judgment, the amount or type of insurance carried by the CONSULTANT has  
16           become inadequate.

17           6) CONSULTANT shall pass down the insurance obligations contained herein  
18           to all tiers of subcontractors working under this Agreement.

19           7) The insurance requirements contained in this Agreement may be met with  
20           a program(s) of self-insurance acceptable to the COUNTY.

21           8) CONSULTANT agrees to notify COUNTY of any claim by a third party or  
22           any incident or event that may give rise to a claim arising from the performance of  
23           this Agreement.

24           8. TERMINATION: COUNTY may, by written notice to CONSULTANT, terminate  
25           this Agreement in whole or in part at any time. Such termination may be for COUNTY'S  
26           convenience or because of CONSULTANT'S failure to perform its duties and obligations under  
27           this Agreement including, but not limited to, the failure of CONSULTANT to timely perform  
28           services pursuant to the Scope of Services described in Exhibit "A" of this Agreement.

1           8.1    Discontinuance of Services. Upon Termination, CONSULTANT shall,  
2 unless otherwise directed by the Notice, discontinue all services and deliver to the  
3 COUNTY all data, estimates, graphs, summaries, reports, and other related materials as  
4 may have been prepared or accumulated by CONSULTANT in performance of services,  
5 whether completed or in progress.

6           8.2    Effect of Termination For Convenience. If the termination is to be for the  
7 convenience of the COUNTY, the COUNTY shall compensate CONSULTANT for  
8 services satisfactorily provided through the date of termination. CONSULTANT shall  
9 provide documentation deemed adequate by COUNTY to show the services actually  
10 completed by CONSULTANT prior to the date of termination. This Agreement shall  
11 terminate thirty (30) days following receipt by the CONSULTANT of the written Notice  
12 of Termination.

13           8.3    Effect of Termination For Cause. If the termination is due to the failure of  
14 CONSULTANT to fulfill its obligations under this Agreement, CONSULTANT shall be  
15 compensated for those services which have been completed in accordance with this  
16 Agreement and accepted by the COUNTY. In such case, the COUNTY may take over the  
17 work and prosecute the same to completion by contract or otherwise. Further,  
18 CONSULTANT shall be liable to the COUNTY for any reasonable additional costs  
19 incurred by the COUNTY to revise work for which the COUNTY has compensated  
20 CONSULTANT under this Agreement, but which the COUNTY has determined in its sole  
21 discretion needs to be revised in part or whole to complete the Project. Prior to  
22 discontinuance of services, the COUNTY may arrange for a meeting with CONSULTANT  
23 to determine what steps, if any, CONSULTANT can take to adequately fulfill its  
24 requirements under this Agreement. In its sole discretion, County's Representative may  
25 propose an adjustment to the terms and conditions of the Agreement, including the contract  
26 price. Such contract adjustments, if accepted in writing by the Parties, shall become  
27 binding on CONSULTANT and shall be performed as part of this Agreement. In the event  
28 of termination for cause, unless otherwise agreed to in writing by the parties, this

1 Agreement shall terminate seven (7) days following the date the Notice of Termination was  
2 mailed to the CONSULTANT. Termination of this Agreement for cause may be  
3 considered by the COUNTY in determining whether to enter into future agreements with  
4 CONSULTANT.

5 8.4 Notwithstanding any of the provisions of this Agreement,  
6 CONSULTANT'S rights under this Agreement shall terminate (except for fees accrued  
7 prior to the date of termination) upon dishonesty, or a willful or material breach of this  
8 Agreement by CONSULTANT, or in the event of CONSULTANT'S unwillingness or  
9 inability for any reason whatsoever to perform the duties hereunder, or if the Agreement is  
10 terminated pursuant to Section 8. In such event, CONSULTANT shall not be entitled to  
11 any further compensation under this Agreement.

12 8.5 Cumulative Remedies. The rights and remedies of the parties provided in  
13 this Section are in addition to any other rights and remedies provided by law or under this  
14 Agreement.

15 9. CONFLICT OF INTEREST: CONSULTANT covenants that it presently has no  
16 interest, including but not limited to, other projects or independent contracts, and shall not acquire  
17 any such interest, direct or indirect, which would conflict in any manner or degree with the  
18 performance of services required under this Agreement. CONSULTANT further covenants that  
19 in the performance of this Agreement, no person having any such interest shall be employed or  
20 retained by it under this Agreement.

21 10. ADMINISTRATION: The Deputy Director, Economic Development Agency,  
22 Project Management Office (or designee) shall administer this Agreement on behalf of COUNTY.

23 11. ASSIGNMENT: This Agreement shall not be assigned by CONSULTANT, either  
24 in whole or in part, without prior written consent of COUNTY. Any assignment or purported  
25 assignment of this Agreement by CONSULTANT without the prior written consent of COUNTY  
26 will be deemed void and of no force or effect.

27 12. NONDISCRIMINATION: CONSULTANT represents that it is an equal  
28 opportunity employer and it shall not discriminate against any employee or applicant for



1 employment because of race, religion, color, national origin, ancestry, sex, physical condition, or  
2 age. Such non-discrimination shall include, but not be limited to, all activities related to initial  
3 employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or  
4 termination.

5 13. ALTERATION: No alteration or variation of the terms of this Agreement shall be  
6 valid unless made in writing and signed by the parties hereto, and no oral understanding or  
7 agreement not incorporated herein shall be binding on any of the parties hereto. No additional  
8 services shall be performed by CONSULTANT without a written amendment to this Agreement.

9 CONSULTANT understands that the County Purchasing Agent or the County Board of  
10 Supervisors are the only authorized COUNTY representatives who may at any time, by written  
11 order, make any alterations within the general scope of this Agreement.

12 If CONSULTANT feels that any work requested of it is beyond the scope of services under  
13 this Agreement, any claim by the CONSULTANT for adjustment under this paragraph shall be  
14 made within thirty (30) days of when the CONSULTANT is requested to perform the disputed  
15 scope of work.

16 14. LICENSE AND CERTIFICATION: CONSULTANT verifies upon execution of  
17 this Agreement, possession of a current and valid license and certification in compliance with any  
18 local, State, and Federal laws and regulations relative to the scope of services to be performed  
19 under Exhibit "A", and that services(s) will be performed by properly trained and licensed staff.

20 15. CONFIDENTIALITY: CONSULTANT shall maintain the confidentiality of any  
21 and all records and information accessed or processed under this Agreement. CONSULTANT  
22 shall not disclose, except as permitted by this Agreement or as authorized by the COUNTY, any  
23 oral or written communication, information, or effort of cooperation between COUNTY and  
24 CONSULTANT, or between COUNTY and CONSULTANT and any other party.

25 16. DOCUMENTS: The COUNTY acknowledges that the CONSULTANT'S reports,  
26 drawings, specifications, field data, field notes, laboratory test data, calculations, estimates and  
27 other similar documents are instruments of professional service, not products. Although  
28 ownership of such documents normally is retained by the CONSULTANT they nonetheless shall

1 in this instance become upon their creation the property of the COUNTY whether the Project is  
2 constructed or not. The COUNTY may use design documents and the designs depicted in them,  
3 without the CONSULTANT'S consent, in connection with the Project, or other COUNTY  
4 Projects, including, without limitation, future additions, alterations, connections, repairs,  
5 information, reference, use or occupancy of the Project(s). Any reuse of the documents by  
6 COUNTY without the written consent of the CONSULTANT shall be at COUNTY'S sole risk  
7 and without liability or legal exposure to the CONSULTANT, and COUNTY shall indemnify,  
8 defend and hold the CONSULTANT harmless from any claims or losses arising out of such use  
9 of the design documents by the COUNTY.

10 16.1 Upon completion of each phase of work described in Exhibit "A", the  
11 CONSULTANT shall furnish to the COUNTY three (3) copies of the deliverables, and/or  
12 documents completed for that phase as specified in Exhibit "A". Upon approval thereof  
13 by the COUNTY, the CONSULTANT shall furnish one reproducible set along with an  
14 electronic copy on Compact Disk (CD) of the deliverables and/or documents.

15 17. JURISDICTION, VENUE: This Agreement is to be construed under the laws of  
16 the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in  
17 the County of Riverside, State of California.

18 18. WAIVER: Any waiver by COUNTY of any breach of any one or more of the terms  
19 of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the  
20 same or of any other term thereof. Failure on the part of the COUNTY to require exact, full and  
21 complete compliance with any terms of this Agreement shall not be construed as in any manner  
22 changing the terms hereof, or stopping COUNTY from enforcement hereof.

23 19. SEVERABILITY: If any provision in this Agreement is held by a court of  
24 competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will  
25 nevertheless continue in full force without being impaired or invalidated in any way.

26 20. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement  
27 between the parties hereto with respect to the subject matter hereof and all prior or  
28 contemporaneous agreements of any kind or nature relating to the same shall be deemed to be

1 merged herein. Any modifications to the terms of this Agreement must be in writing and signed  
2 by the parties herein.

3 21. NOTICES: All correspondence and notices required or contemplated by this  
4 Agreement shall be delivered to the respective parties at the addresses set forth below and are  
5 deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:  
6

7 COUNTY:

8 Economic Development Agency  
9 Project Management Office  
10 3403 10<sup>th</sup> Street, Suite 400  
11 Riverside, CA 92501  
12 Attn: Rebecca McCray  
13

CONSULTANT:

MKH Testing and Inspection, Inc.  
420 W. Lambert Road, Suite E  
Brea, CA 92821  
Attn: Michael K. Hatswell

14 IN WITNESS WHEREOF, the party hereto for the COUNTY has caused their duly authorized  
15 representative to approve the contents of this Agreement as representative of the COUNTY'S  
16 requirements for this project. The execution of this Agreement by the COUNTY shall be through  
17 the authority given in the approval of the capital project and budget authority by the Board of  
18 Supervisors in Minute Order 3-34 of August 23, 2016 and for the Purchase Order issued pursuant  
19 to the same.

20 [REMAINDER OF PAGE LEFT BLANK]  
21  
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27  
28

1 IN WITNESS WHEREOF, the Parties have caused their duly authorized representative to execute  
2 this Agreement.

3  
4 "COUNTY"

5 COUNTY OF RIVERSIDE

6 By: 

7 **CHUCK WASHINGTON**  
Chairman, Board of Supervisors

8  
9  
10 ATTEST:

11 Kecia Harper-Ihem

12 Clerk of the Board

13  
14 By: 

15 Deputy

16  
17 (SEAL)

18  
19  
20  
21  
22 APPROVED AS TO FORM:

23 Gregory P. Priamos

24 County Counsel

25 By: 

26 Synthia M. Gunzel

27 Chief Deputy County Counsel

"CONSULTANT"

MKH Testing and Inspection, Inc.

By: Michael K. Hatswell

Title: President

By: 

Federal Tax I.D. No. 26-3898078

Address: 4195 Chino Hills Pkwy #169

Chino Hills CA 91709.

