

PW 13843

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this 30th day of December, 2013.

BY AND BETWEEN

COUNTY OF LOS ANGELES, a body corporate and politic, hereinafter referred to as County,

AND

BORJ CONSTRUCTION MANAGEMENT, INC., hereinafter referred to as Consultant,

County has determined that it is a matter of public convenience and necessity to engage the specialized services of a Consultant to provide as-needed project management/construction management and related services for various capital projects in the County of Los Angeles.

Consultant is a firm of recognized professionals with extensive experience and training in its specialized field. In rendering these services, Consultant shall, at a minimum, exercise the ordinary care and skill expected of the average practitioner in Consultant's profession acting under similar circumstances. The work will involve the performance of professional, expert, and/or technical services of a temporary or part-time duration; and

The parties hereto do mutually agree as follows:

1. Definition

County means either County; County, as agent for such joint powers authority or nonprofit corporation as may be involved in the issuance of bonds, certificates of participation, or other evidences of indebtedness to finance the work contemplated herein; or said joint powers authority or nonprofit corporation.

2. Consultant's Services

The scope of work shall be as outlined in Attachment 1, dated December 10, 2013. No work shall commence on this project until a written Notice to Proceed is issued by County. County does not guarantee or promise that any work will be assigned to Consultant under this contract until a written Notice to Proceed is issued by the County.

3. Consideration

In consideration of the performance by Consultant in a manner satisfactory to County of the services described in Article 2 above, including receipt and acceptance of such work by Director of the County of Los Angeles Department of Public Works (hereinafter called Director), County agrees to pay Consultant a maximum not to exceed fee of Seven Million Five Hundred Thousand Dollars (\$7,500,000) in the manner set forth immediately below and according to the hourly fee schedule attached to this Agreement as Attachment 4.

County shall compensate Consultant as follows:

- a. Monthly payments for the work accomplished shall be made upon verification and acceptance of such work by Director, as stated in Attachment 1, dated December 10, 2013, up to a maximum of \$7,500,000. Monthly invoices shall be accompanied by an analysis of work completed for the invoice period. This analysis shall be prepared in a format satisfactory to Director.
- b. Subject to the maximum not-to-exceed fee of \$7,500,000, Supplemental Consultant Services may be required at County's discretion, upon prior written authorization by Director, and will be based on the attached Consultant's fee schedule, Attachment 4.

The County reserves the right to supplement the initial not-to-exceed amount of \$7,500,000 million of any contract by up to twenty-five percent.

- c. If Cost of Living Adjustments (COLA) are provided in Attachment 1, County shall limit COLAs to the lesser of: 1) the average salary increase or decrease granted to County employees or 2) the increase or decrease from the previous fiscal year's U.S. Department of Labor Bureau or Labor Statistics' Urban Consumer Price Index for Los Angeles-Riverside-Orange County, CA. If the COLA is based on the CPI, the adjustment shall be based on the change in the CPI from time of execution of this Contract to the time at which the COLA is to be made. In the event fiscal circumstances ultimately prevent the Board of Supervisors from approving any increase in employees' salaries for a fiscal year, Consultant will not receive a COLA for the Contract period which coincides with that fiscal year.

- d. In the event that budget reductions occur in any fiscal year covered by this Agreement that may cause County to consider terminating this Agreement, the County may attempt to renegotiate the terms of this Agreement to reduce the cost thereof in lieu of termination under the termination provisions of the Agreement.
- e. All funds for payment of services rendered after June 30 of the current fiscal year are subject to County's legislative appropriation for this purpose. Payments for services following June 30 of each fiscal year are dependent upon the same action. Notwithstanding any other provision of this Agreement, County shall not be obligated for Consultant's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Agreement in County's budget for each future fiscal year, and in the event that funds are not appropriated for this Agreement, this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. County shall notify Consultant in writing of such nonappropriation of funds at the earliest possible date.
- f. Consultant will not be required to perform services which will exceed the Contract amount, scope of work, and Contract dates without amendment to this Agreement.

Consultant will not proceed with additional services without prior written authorization. Consultant will not be paid for any expenditures beyond the Contract amount stipulated without amendment to this Agreement.
- g. Consultant will notify County when Contract amount has been incurred up to 75% of the Contract total.

4. Equipment and Supplies

Consultant agrees to furnish all necessary equipment and supplies used in the performance of the aforementioned services at Consultant's sole cost and expense.

5. County's Responsibility

County will make available drawings, specifications, and other records as available in County Department of Public Works' file. Notwithstanding the foregoing, County does not represent the accuracy of the content of said materials.

6. County's Representative

Director or Director's authorized representative, shall represent County in all matters pertaining to the services to be rendered pursuant to this Agreement.

7. Term and Termination

The term of this Agreement shall commence on the date of contract execution and, except as provided below in this paragraph, shall extend for a period of three (3) years from such commencement date. The Agreement includes two (2) one-year renewal options, which may be exercised at the sole discretion of the County.

Notwithstanding the above-referenced expiration date, if the County has authorized the Consultant to perform services on a given project prior to the stated expiration date, but ultimately such services are not completed by such stated expiration date, the expiration date of the Agreement shall be automatically extended until such services are completed to the satisfaction of the County, and automatically extended for that purpose only.

County may, at its sole option and discretion, cancel or terminate this Agreement, without any liability other than payment for work already performed, up to the date of termination by giving three days written notice of such termination to Consultant. Consultant shall be paid the reasonable value of its services rendered. In the event of any such termination by County, Consultant shall provide to County a termination report consisting of all drawings, specifications, reports, and data accumulated to the date of such termination in a form capable of assimilation for use by County.

8. Ownership of County Materials

a. Consultant and County agree that all materials, including but not limited to, designs, specifications, techniques, plans, reports, deliverables, data, photographs, diagrams, maps, images, graphics, text, videos, advertising, software, source codes, website plans and designs, interactive media, drafts, working papers, outlines, sketches, summaries, edited and/or unedited versions of deliverables, and any other materials or information developed under this Agreement and any and all Intellectual Property rights to these materials, including any copyrights, trademarks, service marks, trade secrets, trade names, unpatented inventions, patent applications, patents, design

rights, domain name rights, know-how, and any other proprietary rights and derivatives thereof, are and/or shall be the sole property of County (hereafter collectively, "County Materials"). Consultant hereby assigns and transfers to County all Consultant's right, title and interest in and to all such County Materials developed under this Agreement.

Notwithstanding such County ownership in the County Materials, Consultant may retain possession of working papers and materials prepared by Consultant under this Contract. During and for a minimum of five years subsequent to the term of this Contract, County shall have the right to inspect any and all such working papers and materials, make copies thereof and use the working papers and materials and the information contained therein.

b. Consultant shall execute all documents requested by County and shall perform all other acts requested by County to assign and transfer to, and vest in County, all Consultant's right, title and interest in and to the County Materials, including, but not limited to, any and all copyrights, trademarks, service marks, trade names, unpatented inventions, patent applications, patents, design rights, domain name rights, know-how, and any other proprietary rights and derivatives thereof resulting from this Contract. County shall have the right to register all applicable copyrights, trademarks and patents in the name of the County of Los Angeles. Further, County shall have the right to assign, license, or otherwise transfer any and all County's rights, title and interest, including, but not limited to copyrights, trademarks, and patents, in and to the County Materials.

c. Consultant represents and warrants that the County Materials prepared herein under this Agreement, are the original work of Consultant and do not infringe upon any Intellectual Property or proprietary rights of third parties. For those portions of the County Materials that are not the original work of Consultant, Consultant represents and warrants that it has secured all appropriate licenses, rights, and/or permission from appropriate third parties to include such materials in the County Materials.

Consultant shall defend, indemnify and hold County harmless against any claims by third parties based on infringement of copyright, patent, trade secret, trademark, or any other claimed Intellectual Property or proprietary right, arising from County's use of County Materials created and/or prepared by Consultant. Consultant will also indemnify and defend at its sole expense, any action brought against County based on a claim that County Materials furnished hereunder by Consultant and used within the scope of this Agreement infringe any copyright, patent, trade secret, trademark, or any other claimed intellectual property or proprietary right of third parties, and Consultant will pay any costs, damages and attorney's fees incurred by County. County will notify Consultant promptly and in writing of any such action or claim and will permit Consultant to fully participate in the defense thereof.

d. Consultant shall affix the following notice to all County Materials: "© Copyright 2013 (or such other appropriate date of first publication), County of Los Angeles. All Rights Reserved." Consultant shall affix such notice on the title page of all images, photographs, documents and writings, and otherwise as County may direct.

e. County shall also have the sole right to control the preparation, modification, and revisions to, all acknowledgment and/or attribution language for all County Materials resulting from this Agreement. County will however, honor requests by Consultant seeking removal of all acknowledgment and/or attribution language relating to the Consultant, should Consultant no longer wish to receive attribution for its work on the County Materials.

f. If directed to do so by County, Consultant will place the County name and County logo on County Materials developed under this Agreement. Consultant may not, however, use the County name and County logo on any other materials prepared or developed by Consultant that falls outside the scope of this Agreement.

9. Indemnification and Insurance

Two alternative Indemnification and Insurance Provisions are set forth in Attachments 2 and 3 of this Agreement.

Consultant has selected one of the two alternative Indemnification and Insurance Provisions and has indicated its selection by initialing the selected alternative as follows:

Alternative 1 _____

Alternative 2 /

10. Anti-Discrimination

The following provisions are required by Section 4.32.010 et seq. of the Los Angeles County Code:

Consultant certifies and agrees that all persons employed by Consultant, its affiliates, subsidiaries, or holding companies are, and will be, treated equally by Consultant without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with state and Federal anti-discrimination laws. Consultant further certifies and agrees that it will deal with its subconsultants, bidders, and vendors without regard to or because of race, religion, ancestry, national origin, or sex. Consultant agrees to allow access to its employment records during regular business hours to verify compliance with the foregoing provisions when so requested by County.

Consultant specifically recognizes and agrees that if County finds that any of the foregoing provisions have been violated, the same shall constitute a material breach of Contract upon which County may determine to cancel, terminate, or suspend the Contract. While County reserves the right to determine individually that the anti-discrimination provision of the Contracts have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Consultant has violated state or Federal anti-discrimination laws shall constitute a finding by County that Consultant has violated the anti-discrimination provisions of the Contract.

At its option, and in lieu of canceling, terminating, or suspending the Contract, County may impose damages for any violation of the anti-discrimination provisions of this paragraph, in the amount of Two Hundred Dollars (\$200) for each violation found and determined. County and Consultant specifically agree that the aforesaid amount shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained by reason of any such violation, because from the circumstances and the nature of the violation, it is impracticable and extremely difficult to fix actual damages.

11. Independent Contractor Status

This Agreement is by and between County of Los Angeles and Consultant and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Consultant.

Consultant understands and agrees that all persons furnishing services to County pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of Consultant and not of County.

Consultant shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of Consultant pursuant to this Agreement.

12. County's Quality Assurance Plan

County, or its agent, will evaluate Consultant's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Consultant's compliance with all Contract terms and performance standards. Consultant deficiencies which County determines are severe or continuing, and that may place performance of the Agreement in jeopardy if not corrected, will be reported to the Board of

Supervisors. The report will include improvement/corrective action measures taken by County and Consultant. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties as specified in this Agreement.

13. Assignment

This Agreement shall not be assigned without the prior written consent of County. Any attempt to assign without such consent shall be void and confer no rights on any third parties.

14. Forum Selection

Consultant hereby agrees to submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by Consultant, on Consultant's behalf or on the behalf of any subconsultant, which arises from this Agreement or is concerning or connected with services performed pursuant to this Agreement, shall be deemed to be in the courts of the State of California located in Los Angeles County, California.

15. Conflict of Interest

No County employee in a position to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Consultant herein, or have any other direct or indirect financial interest in this Agreement.

16. Prohibition from Involvement in Bidding Process

Consultant understands and agrees that neither it nor its subsidiaries shall be involved in any way in the bidding process on any Request for Proposal developed or prepared by or with the assistance of Consultant's services rendered pursuant to this Agreement, either as a prime Consultant or subconsultant, or as a Consultant to any other prime Consultant or subconsultant. Any such involvement by Consultant shall result in the rejection by the County of the bid by the prime Consultant in question.

17. Lobbying

Consultant and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Consultant, shall fully comply with County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Consultant or any County lobbyist or County lobbying firm retained by Consultant to fully comply with County Lobbyist Ordinance shall constitute a material breach of this

Contact, upon which County may immediately terminate or suspend this Contract.

18. Gratuities

It is improper for any County officer, employee, or agent to solicit consideration, in any form, from Consultant with the implication, suggestion, or statement that Consultant's provision of the consideration may secure more favorable treatment for Consultant in the award of the Contract or that Consultant's failure to provide such consideration may negatively affect County's consideration of Consultant's submittal. Consultant shall not offer or give, either directly or through an intermediary, consideration, in any form, to a County officer, employee, or agent for the purpose of securing favorable treatment with respect to the award of the Contract.

Consultant shall immediately report any attempt by a County officer, employee, or agent to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee, or to County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Failure to report such a solicitation may result in Consultant's submittal being eliminated from consideration.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

19. Employment of Laid-Off County Employees

Should Consultant, or any subconsultant performing more than \$250,000 of the Contract value, require additional or replacement personnel to perform services under this Contract other than the performance of a skilled trade, Consultant shall give first consideration for such employment openings to qualified County employees who are targeted for layoff or qualified former County employees who are on a re-employment list.

20. Consultant's Warranty of Adherence to County's Child Support Compliance Program

Consultant acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through Contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Consultant's duty under this Contract to comply with all applicable provisions of law, Consultant warrants that it is now in compliance and shall during the term of this Contract maintain compliance with employment and wage reporting

requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

Failure of Consultant to maintain compliance with these requirements shall constitute a default by Consultant under this Contract. Without limiting the rights and remedies available to County under any other provision of this Contract, failure to cure such default within 90 days of notice by the Los Angeles County Child Support Services Department shall be grounds upon which County Board of Supervisors may terminate this Contract.

21. Consultant's Acknowledgment of County's Commitment to Child Support Enforcement

Consultant acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Consultant understands that it is County's policy to encourage all County consultants to voluntarily post County's L.A.'s Most Wanted: Delinquent Parents poster in a prominent position at Consultant's place of business. County's District Attorney will supply Consultant with the poster to be used.

22. Termination for Improper Consideration

County may, by written notice to Consultant, immediately terminate the right of Consultant to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Consultant, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment, or extension of the Agreement or the making of any determinations with respect to Consultant's performance pursuant to the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

Consultant shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

23. Consideration of GAIN/GROW Program Participants for Employment

Should Consultant require additional or replacement personnel after the effective date of this Agreement, Consultant shall give consideration for any such employment openings to participants in County's Department of Public Social Services' Greater Avenues for Independence (GAIN) or General Relief Opportunity for Work (GROW) Program who meet Consultant's minimum qualifications for the open position. County will refer GAIN/GROW participants by job category to Consultant.

24. Notice to Employees Regarding the Federal Earned Income Credit

Consultant shall notify its employees, and shall require each subconsultant to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.

25. Reduction of Solid Waste

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Consultant agrees to use recycled-content paper to the maximum extent possible on the project.

26. County Rights

The County may employ, either during or after performance of this Contract, any right of recovery the County may have against the Consultant by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of the County under this Contract are in addition to any right or remedy provided by California law.

27. Fair Labor Standards Act

Consultant shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its agents, officers, and employees from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by Consultant's employees for which County may be found jointly or solely liable.

28. Prevailing Wage Requirements

Consultant must comply with all applicable prevailing wage requirements. The subject project is a public work as defined in Section 1720 of the California Labor Code.

29. Employment Eligibility Verification

Consultant warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. Consultant shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Consultant shall retain such documentation for all covered employees for the period prescribed by law. Consultant shall indemnify, defend, and hold harmless County, its officers, and employees from employer sanctions and any other liability which may be assessed against Consultant or County in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

30. Consultant Responsibility and Debarment

a. A responsible Consultant is a Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Contract. It is the County's policy to conduct business only with responsible consultants.

b. The Consultant is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Consultant on this or other Contracts which indicates that the Consultant is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Consultant from bidding or proposing on, or being awarded, and/or performing work on County Contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Consultant may have with the County.

c. The County may debar a Consultant if the Board of Supervisors finds, in its discretion, that the Consultant has done any of the following: (1) violated a term of a Contract with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on the Consultant's quality, fitness or capacity to perform a Contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

d. If there is evidence that the Consultant may be subject to debarment, the Department will notify the Consultant in writing of the evidence which is the basis for the proposed debarment and will advise the Consultant of the scheduled date for a debarment hearing before the Contractor Hearing Board.

e. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Consultant and/or the Consultant's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Consultant should be debarred, and, if so, the appropriate length of time of the debarment. The Consultant and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

f. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

g. If the Consultant has been debarred for a period longer than five years, that Consultant may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Consultant has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

h. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Consultant has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

i. These terms shall also apply to subconsultants of County Consultants.

31. Compliance with Jury Service Program

This Contract is subject to provisions of the County's ordinance entitled Contractor Employee Jury Service (Jury Service Program) as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

a. Unless Consultant has demonstrated to the County's satisfaction either that Consultant is not a Consultant as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Consultant qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Consultant shall have and adhere to a written policy that provides that its Employees shall receive from the Consultant, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Consultant or that the Consultant deduct from the Employee's regular pay the fees received for jury service.

b. For purposes of this Section, Consultant means a person, partnership, corporation or other entity which has a Contract with the County or a subcontract with a County Consultant and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County Contracts or subcontracts. Employee means any California resident who is a full-time employee of Consultant. Full-time means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Consultant has a long-standing practice that defines the lesser number of hours as full-

time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Consultant uses any subconsultant to perform services for the County under the Contract, the subconsultant shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract Agreement and a copy of the Jury Service Program shall be attached to the Agreement.

c. If Consultant is not required to comply with the Jury Service Program when the Contract commences, Consultant shall have a continuing obligation to review the applicability of its exception status from the Jury Service Program, and Consultant shall immediately notify County if Consultant at any time either comes within the Jury Service Program's definition of Consultant or if Consultant no longer qualifies for an exception to the Program. In either event, Consultant shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Consultant demonstrate to the County's satisfaction that Consultant either continues to remain outside the Jury Service Program's definition of Consultant and/or that Consultant continues to qualify for an exception to the Program.

d. Consultant's violation of this Section of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Consultant and/or bar Consultant from the award of future County Contracts for a period of time consistent with the seriousness of the breach.

32. No Payment for Services Provided Following Expiration/Termination of Agreement

Consultant shall have no claim against County for payment for any money or reimbursement, of any kind whatsoever, for any service provided by Consultant after the expiration or other termination of this Agreement. Should Consultant receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from Consultant. This provision shall survive the expiration or other termination of this Agreement.

33. Notice to Employees Regarding the Safely Surrendered Baby Law

The Consultant shall notify and provide to its employees, and shall require each subconsultant to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

The Consultant acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Consultant understands that it is the County's policy to encourage all County Consultants to voluntarily post the County's, A Safely Surrendered Baby Law poster, in a prominent position at the Consultant's place of business. The County's Department of Children and Family Services will supply the Consultant with the poster to be used.

34. Consultant Assignment

a. Consultant shall not assign its rights or delegate its duties under the Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under the Agreement shall be deductible, at County's sole discretion, against the claims which Consultant may have against County.

b. Shareholders, partners, members, or other equity holders of Consultant may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Consultant to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.

c. Any assumption, assignment, delegation, or takeover of any of the Consultant's duties, responsibilities, obligations, or performance of same by any entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

35. Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless contractor qualifies for an exemption or exclusion, contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter. 2.206.

36. Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program

Failure of contractor to maintain compliance with the requirements set forth in the "Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of contractor, pursuant to County Code Chapter 2.206.

37. Notices

Any notice required or desired to be given pursuant to this Agreement shall be given in writing and addressed as follows:

COUNTY

Department of Public Works
Architectural Engineering Division
Contracts & Operations, 8th Floor
900 South Fremont Avenue
Alhambra, CA 91803
(626) 458-2566

CONSULTANT

BORJ Construction Management, Inc.
1701 East Lambert Road, Suite B
La Habra, CA 90631
(323) 864-3020

The address for notice may be changed by giving notice pursuant to this paragraph.

38. Entire Agreement

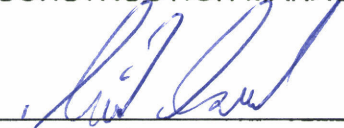
This Contract constitutes the entire Agreement between County and Consultant and may be modified only by further written Agreement between the parties hereto.

IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused these presents to be subscribed by the Director of the Department of Public Works, and the Consultant has hereunto subscribed its corporate name and affixed its corporate seal by its duly authorized officers the day, month, and year herein first above written.

COUNTY OF LOS ANGELES

By 
Deputy Director
Department of Public Works

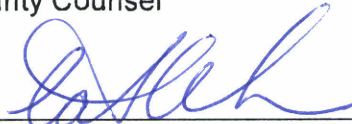
BORJ CONSTRUCTION MANAGEMENT, INC.

By 
President

By _____
Secretary

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By 
Deputy County Counsel

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ATTACHMENT 1

**AS-NEEDED PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT
AND RELATED SERVICES
BORJ CONSTRUCTION MANAGEMENT, INC.**

The services to be rendered by the Consultant shall include all services as described in their proposal, except to the extent they are inconsistent with this attachment and the terms of this Agreement, and shall consist of all such services as are customarily rendered when providing professional services of this type.

SCOPE OF SERVICES

1 General

The Consultant shall provide Project Management/Construction Management and Related Services as a member of the County Project Delivery Team in support of Public Works Project Management Divisions. As a member of this team, the Consultant is expected to manage projects in an excellent, proficient, and legal manner. The Consultant is expected to be responsible for a combination of the following essential functions:

- ❖ Coordinate the programming, design, and construction of projects.
- ❖ Coordinate design reviews and plan approvals, identify potential problems in advance, and take corrective action or notify the proper level of authority.
- ❖ Prepare authorization documentation (Board of Supervisors' letters and delegation of memoranda).
- ❖ Prepare and maintain project budgets and schedules.
- ❖ Review the work of other consultants and make recommendations on the approval of invoices.
- ❖ Administer project contracts.
- ❖ Manage cost and schedule performance of assigned projects.

- ❖ Prepare and coordinate monthly project construction reports.
- ❖ Review and make recommendations on contractor submittals.
- ❖ Coordinate project close-out activities.
- ❖ Evaluate and make recommendations on changes in scope of work and prepare requests for change orders.
- ❖ Interface with other County departments and agencies to resolve problems and coordinate planning and other project management functions as necessary.

The Consultant shall monitor, coordinate, and evaluate all key project activities to ensure optimum scope/configuration control, cost/schedule compliance, and quality assurance/control of project designs, specifications, contracting strategies, and contractor performance leading to claims avoidance/claims mitigation. When appropriate, the Consultant will participate in the training of junior Public Works' staff on preapproved project delivery techniques.

2. Engineering and Technical Support Services

The Consultant shall furnish engineering and management and professional/technical support services as required to manage and execute project activities, including, but not limited to:

- ❖ Guidance and training in project control systems to Public Works' project managers (e.g. cost, change, schedule, and document control).
- ❖ Development of building systems alternatives.
- ❖ Development of alternate/value engineering design solutions.
- ❖ Preparation of resource-loaded project schedules.
- ❖ Review of architectural and engineering documents and studies for accuracy, constructability, and value engineering.
- ❖ Constructability review of all contract documents.
- ❖ Identify and prepare alternative bidding/proposal packages.

- ❖ Preconstruction site analysis and planning, including considerations for temporary utilities and structures, construction sequencing, construction site coordination, site infrastructure, construction-related traffic analysis, etc.
- ❖ Development of project phasing alternatives including cost models.
- ❖ Cost estimates and related cost and contingency analyses.
- ❖ Critical path method project schedules and related analyses.
- ❖ Quality control inspections and reports.
- ❖ Field engineering investigations, assessments, and reports.
- ❖ Surveys of industry suppliers and vendors.
- ❖ Review and make recommendations on contractor requests for information.
- ❖ Geotechnical testing and investigation services.
- ❖ Land surveying services.
- ❖ Feasibility and special studies.
- ❖ Peer review services.
- ❖ Environmental documentation preparation and processing in conformance with the California Environmental Quality Act.

2.1 Optional Services

- ❖ Support services for project labor agreements.
- ❖ Support services for public outreach programs (local worker hiring and small business outreach).

Schedule

The term of this Agreement shall commence on the date of contract execution and, except as provided below in this paragraph, shall extend for a period of three (3) years from such commencement date. The Agreement includes two (2) one-year renewal options, which may be exercised at the sole discretion of the County.

Notwithstanding the above-referenced expiration date, if the County has authorized the Consultant to perform services on a given project prior to the stated expiration date, but ultimately such services are not completed by such stated expiration date, the expiration date of the Agreement shall be automatically extended until such services are completed to the satisfaction of the County, and automatically extended for that purpose only.

Compensation

Invoices shall conform to Public Works' Invoicing Instructions. Consultant shall submit monthly payment requests for work completed.

Consultant shall be paid in accordance with the attached fee schedule, Attachment 4. The fee schedule shall remain unchanged for the first year. The fee schedule for the succeeding terms will be in accordance with the County's cost-of-living policy.

Mileage will be reimbursable. Consultant will be paid the standard mileage rate for County mileage permittees. Consultant shall submit monthly requests for mileage reimbursement.

After issuance of Notice to Proceed by the County, the Consultant shall be compensated at a fee not to exceed \$7,500,000.

Attach.

(P:\aepub\CONTRACTS\Kathleen\PMCM 2013\BORJ Agreement Attachment.doc)

ACKNOWLEDGMENT

State of California
County of Orange

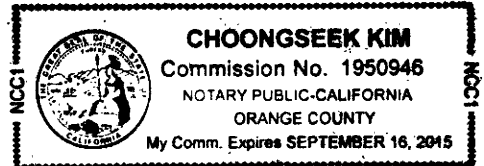
On Dec 12, 2013 before me, Choongseek Kim, Notary Public
(insert name and title of the officer)

personally appeared Nader Farnoush
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in
~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



ALTERNATIVE 1

INDEMNIFICATION AND INSURANCE PROVISIONS

I. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless County, its agents, appointed and elected officers, County Special Districts, and employees from and against any and all liability, expense (including defense costs and legal fees), lawsuits, actions, claims, proceedings, and damages of any nature whatsoever, including without limitation, brought for or on account of bodily injury, death, personal injury, or property damage (including property of Consultant), which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, representatives, contractors, subcontractors, consultants, or subconsultants of any tier.

The foregoing paragraph notwithstanding, Consultant further shall indemnify, defend, and hold harmless County, its agents, appointed and elected officers, County Special Districts, and employees from and against any Workers' Compensation suits, liability, or expense arising from, or connected with, any services performed pursuant to this Agreement on behalf of Consultant by any person.

Neither the Consultant, nor its agents and subconsultants of any tier, shall be obligated to indemnify the County and its related persons and entities for liabilities caused by the active negligence of the County and its related persons and entities. However, this provision does not limit any obligation to insure and defend the County and its related persons and entities arising under the policies of insurance maintained by the Consultant under this provision.

II. INSURANCE

Without limiting Consultant's indemnification of County and during the term of this Agreement, Consultant shall provide and maintain, at its own expense, the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the County and primary to, and not contributing with, any other insurance maintained by the County. Certificate(s) or other evidence of coverage shall be delivered to the Department of Public Works, Architectural Engineering Division, 900 South Fremont Avenue, 8th Floor, Alhambra, CA 91803, prior to commencing services under this Agreement, shall specifically identify this Agreement, and shall contain the express condition that County is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance.

Failure by Consultant to procure and maintain the required insurance shall constitute a material breach of contract upon which County may immediately terminate or suspend this Agreement.

A. Liability:

Such insurance shall be endorsed naming the County of Los Angeles as an additional insured and shall include:

1. General liability insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises/operations, contractual, independent contractors, advertising, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
 - a. If written with an annual aggregate limit, the policy limit should be three (3) times the above-required occurrence limit.
 - b. If written on a Claims Made Form, the Consultant shall be required to provide an extended two-year reporting period commencing upon termination or cancellation of this AGREEMENT.
2. Comprehensive auto liability for all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

B. Workers' Compensation:

Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with a One Million Dollar (\$1,000,000) limit, covering all persons the Consultant is legally required to cover.

C. Professional Liability:

Insurance covering liability arising from any error, omission, or negligent act of the Consultant, its officers, or employees with a limit of liability of not less than One Million Dollars (\$1,000,000) per claim or occurrence, and Two Million Dollars (\$2,000,000) in aggregate. If written on a Claims Made Form, Consultant shall continue to provide coverage for this project for a period of two (2) years from the date of termination or completion of this AGREEMENT.

Consultant agrees to the above Indemnification and Insurance Provisions.

Initials

ALTERNATIVE 2

INDEMNIFICATION AND INSURANCE PROVISIONS

A. **INSURANCE:** Consultant shall, at its own expense, maintain with insurance companies acceptable to the County general liability, professional liability, comprehensive automobile liability, and workers' compensation insurance as set forth below:

1. **General Liability Insurance:** The Consultant shall maintain general liability insurance written on a commercial or comprehensive general liability form(s) that include(s) coverage for premises-operations, products/completed operations, contractual liability, broad-form property damage, and personal injury liability. The general liability policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

2. **Professional Liability Insurance:** Consultant shall maintain professional liability insurance, including contractual liability coverage, with policy limits of at least One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

3. **Comprehensive Automobile Insurance:** The Consultant shall maintain automobile insurance for all owned, non-owned, and hired vehicles with a combined single limit of One Million Dollars (\$1,000,000) per occurrence or accident.

4. **Workers' Compensation Insurance:** The Consultant shall maintain workers' compensation insurance in an amount and form which will meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability Coverage with limits of One Million Dollars (\$1,000,000) per occurrence.

5. **General Conditions Relating to Insurance:**

a. **Additional Insureds:** The County, District, its agents, appointed and elected officers, County Special Districts, and employees ("County and its related persons and entities") shall be named as additional insureds on each policy, except workers' compensation and professional liability insurance, the Consultant is required to provide under this Agreement. Such insurance shall be primary to, and not contributing with, any other insurance maintained by or for the County and its related persons and entities.

b. **Waiver of Subrogation:** Each policy obtained by the Consultant to fulfill its obligations under this provision shall contain a provision waiving the right of the insurer to subrogate against the County and its related persons and entities for any liability covered by the policy.

c. **Claims Made Policies**: If any of the policies obtained by the Consultant to fulfill its obligations under this provision are written on a claims-made basis, the policy shall be endorsed to provide an extended reporting period of not less than two years following the termination of this Agreement or the Consultant's work on the project referred to in this Agreement, whichever is later.

d. **Occurrence Policies**: If any of the policies obtained by the Consultant to fulfill its obligations under this provision are written on an occurrence basis, the policies and any endorsements required by this provision (including, but not limited to, the additional insured endorsements) shall be maintained in full force and effect for a period of not less than two years following the termination of this Agreement or the Consultant's work on the project referred to in this Agreement, whichever is later.

e. **Certificate of Insurance**: Prior to commencing work on the project referred to in this Agreement, the Consultant shall provide to the County certificate(s) of insurance identifying the insurers, policies, coverages, and limits of liability for the insurance the Consultant is required to provide under this provision. Accompanying the certificate(s) shall be a copy of the required additional insured endorsement(s) to the policies obtained by the Consultant as set forth above.

f. **Notice of Cancellation or Nonrenewal**: Each policy shall require the insurer to give the County at least 30 days notice of termination of the policy by cancellation, rescission, nonrenewal, or otherwise. Notice shall also be given to County of any material change in the terms of the coverage required to be maintained by the Consultant under this provision.

g. **Delivery of Notices**: All certificates and notices required by this provision shall be in writing and shall be delivered to the Department Contract Administrator. The notices and certificates shall refer to this contract.

h. **Maintenance of Insurance**: The Consultant shall promptly pay the premiums on all insurance policies required under this provision. The Consultant further agrees that the policies shall remain in full force and effect as required by this Agreement. Consultant shall immediately obtain replacement coverage for any policy which is terminated, canceled, non-renewed, or which has paid policy limits, or upon the insolvency of the insurer issuing the policy.

i. **Breach**: Failure on the part of Consultant to procure or maintain insurance as required by this provision shall constitute a material breach of this contract. In the event of such a breach, the County may, among other things, terminate this Agreement, suspend work being performed on the project by or on behalf of the Consultant, or at its sole discretion, the County may obtain replacement coverage. In the event that replacement coverage is obtained, the Consultant shall, upon demand, repay the County for the full amount of premiums paid by

the County for the replacement coverage. In its sole discretion, the County may offset the cost of premiums against any monies due to the Consultant from the County.

B. INDEMNIFICATION: To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the County, District, its agents, appointed and elected officers, County Special Districts, and employees ("County and its related persons and entities") from any and all claims, liabilities, expenses (including defense costs and legal fees), lawsuits, actions, proceedings, and damages of any nature whatsoever, including without limitation, brought for or on account of bodily injury, death, personal injury, or property damage (including property of Consultant), which arise out of, pertain to, or related to the negligence, recklessness or willful misconduct of the Consultant, its officers, agents, employees, representatives, contractors, subcontractors, consultants, or subconsultants of any tier. The obligation to indemnify the County is in addition to the obligation to procure insurance as set forth in this provision.

County agrees that prior to demanding a defense from the Consultant, that it or Consultant shall tender such claim to the insurers issuing the policies of insurance referred to in this provision. If the claims are not covered by any policy referred to in this provision, or the insurers fail or refuse to defend or indemnify the County or any of its related persons and entities, then the Consultant's duty to defend, indemnify and hold harmless the County under the foregoing indemnity provision shall apply in full.

Neither the Consultant, nor its agents and subconsultants of any tier, shall be obligated to indemnify the County and its related persons and entities for liabilities caused by the active negligence of the County and its related persons and entities. However, this provision does not limit any obligation to insure and defend the County and its related persons and entities arising under the policies of insurance maintained by the Consultant under this provision.

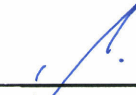
C. SUBCONSULTANTS' INSURANCE AND INDEMNIFICATION: Consultant shall require subcontractors, subconsultants, and independent contractors to maintain the same insurance coverage which it is required to maintain under this provision, including but not limited to, the obligation to name the County and its related persons and entities as additional insureds under each such policy.

Consultant further shall require its contractors, subcontractors, consultants, and subconsultants, to indemnify and defend the County and its related persons and entities from any and all claims, liabilities, expenses, lawsuits, actions, or proceedings arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of each contractor, subcontractor, consultant, subconsultant, or any tier.

Failure on the part of Consultant to require its subcontractors, subconsultants, and independent contractors to provide insurance and indemnification shall constitute a material breach of this contract. In the event of such breach, the County may, among other

things, terminate this Agreement, suspend work being performed on the project by or on behalf of the Consultant, or in its sole discretion, the County may obtain replacement insurance coverage. In the event that replacement coverage is obtained, the Consultant shall, upon demand, repay the County for the full amount of premiums paid by the County for the replacement coverage. In its sole discretion, the County may offset the cost of premiums against any monies due to the Consultant from the County.

Consultant agrees to the above Indemnification and Insurance Provisions.



Initials

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1/2007

**AS-NEEDED
PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT
CONSULTANT SERVICES CONTRACTS**

**BILLING RATE/FEE SCHEDULE
EFFECTIVE 2014**

*Position/Description	Hourly Rate
Principal Project Manager - Manage and coordinate very large and highly specialized building construction projects through all phases of project delivery.	\$ 184
Project Manager III - Manage and coordinate very large and highly complex building construction projects through all phases of project delivery.	\$ 165
Project Manager II - Manage and coordinate more complex County facilities design and design and construction projects through all phases of the project delivery.	\$ 146
Project Manager I - Manage and coordinate the programming, design, and construction of medium to large County facilities or capital projects.	\$ 136
Scheduler III - Create, maintain and monitor the Integrated Master Schedule and work as an integral part of the project controls organization and project management team. <i>Possess a minimum of 15 years' scheduling experience with various scheduling applications.</i>	\$ 136
Scheduler II - Create, maintain and monitor the Integrated Master Schedule and work as an integral part of the project controls organization and project management team. <i>Possess a minimum of 10 years' scheduling experience with various scheduling applications.</i>	\$ 122
Inspector - Perform field inspections to ensure quality control and compliance with codes and ordinances related to construction of capital projects.	\$ 117
Scheduler I - Create, maintain and monitor the Integrated Master Schedule and work as an integral part of the project controls organization and project management team. <i>Possess a minimum of 5 years' scheduling experience with various scheduling applications.</i>	\$ 109

*Position/Description	Hourly Rate
Administrative Assistant - Collect, analyze and interpret data. Assist in budgets and reports.	\$ 77
Document Control II - Utilize working knowledge of construction-related documents and processes; coordinate document control correspondence and issues between all parties; maintain the flow of all project documents.	\$ 77
Secretary - Assist administrative staff; screen in-person inquiries and telephone calls, transmit written and verbal messages, requests and notices.	\$ 67
Document Control I - Assist project managers; track and process day-to-day records and invoices.	\$ 67
Clerk - Perform general clerical duties such as filing and maintaining records in a recognized procedure.	\$ 57

Special Assignments:	Fee
Initial Work Authorization	\$ 600
Each Supplement Authorization	\$ 300

* The candidate requirements and detailed responsibilities for each position will vary depending on the specific solicitation for each project.