

A G R E E M E N T

THIS AGREEMENT, hereinafter referred to as "AGREEMENT" for purposes of identification hereby numbered OCP12-018 and dated \_\_\_\_29th\_\_\_\_ day of January, 20 13 is

BY AND BETWEEN

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

AND

AECOM Technical Services, Inc., a California Corporation, hereinafter referred to as "A/E",

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

RECITALS

WHEREAS, COUNTY requires professional services to accomplish projects and/or services ("PROJECTS/SERVICES") as described in "ON-Call" Architect/Engineer (A/E) Environmental Planning and Regulatory Permitting Professional Consultant Services Scope of Work, hereinafter referred to as "Exhibit A," attached hereto and incorporated herein by reference;

WHEREAS, A/E is a firm whose principals are, as required by law, registered by the State of California for the practice of Civil Engineering, Mechanical Engineering, Electrical Engineering, Corrosion Engineering, Architecture, Landscape Architecture, or Land Surveying.

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

A. Retainer

1. COUNTY does hereby retain A/E to perform the PROJECTS/

1 SERVICES as required by this AGREEMENT.

2 2. A professional, duly registered in the State of  
3 California, who shall be assigned to PROJECTS/SERVICES and whose services are  
4 offered by A/E and accepted by COUNTY is ~~Anne Pietre~~ Jerry Flores.

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

12 a. ArcheoPaleo Resource Management, Inc. - paleontological  
13 resources

14 b. Terry Hayes and Associates - air and noise analysis

15 4. Consultants/contractors may be substituted and/or added  
16 by mutual AGREEMENT of A/E and the Director, County of Orange, OC Parks or  
17 his designee, hereinafter referred to as "DIRECTOR".

18 5. A/E's employment of independent consultants/contractors shall  
19 not relieve A/E from the performance of its own responsibilities pursuant to  
20 this AGREEMENT. However, all consultants/contractors independently  
21 contracting with COUNTY shall be independently liable to COUNTY for the  
22 performance of the work pursuant to their agreements, and A/E shall have no  
23 liability for work by contractors independently contracting with COUNTY.

24 **B. PROJECTS/SERVICES**

25 1. Description of PROJECTS/SERVICES

26 a. PROJECT/SERVICES to be performed by A/E shall consist of

1 the work as specified herein and as required in Exhibit A. If in the event  
2 Exhibit A shall be in conflict with any provision of this AGREEMENT, the  
3 wording as set forth in Exhibit A shall prevail.

4           b. A/E shall be responsible for submitting all  
5 PROJECTS/SERVICES to COUNTY in a form which has been thoroughly reviewed and  
6 checked for completeness, accuracy and consistency by the registered  
7 professional named in Section A herein; and, any PROJECTS/SERVICES not  
8 meeting this requirement will be returned to A/E prior to review by COUNTY.

9           2. Design Criteria and Standards

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

12           3. Scheduling

13           a. Concurrently with the work of the AGREEMENT, A/E shall  
14 prepare a progress work schedule and within five (5) working days from the  
15 date of receipt of individual assignments from COUNTY, A/E shall submit to  
16 COUNTY two (2) copies of a progress work schedule which shall delineate dates  
17 of commencement and completion of the various phases of PROJECTS/SERVICES  
18 assignments. A/E schedule shall include required COUNTY review period(s) set  
19 forth herein. An approved copy of the progress schedule will be returned to  
20 A/E.

21           b. A/E shall allow at least three (3) working days for COUNTY  
22 review of progress work schedule. In planning work A/E should anticipate and allow  
23 ten (10) working days for COUNTY review of each submittal required in Exhibit A.

24           c. A/E shall meet on an "as-needed" basis as determined by  
25 DIRECTOR to review progress of work, adherence to progress schedule,  
26 coordination of work, scheduling of seminars, if needed, and to resolve any

1 problems that may develop.

2 d. Within three (3) working days of each meeting, A/E  
3 shall prepare a brief memorandum summarizing the results of the meeting and  
4 shall submit it to COUNTY for concurrence.

5 e. A/E shall complete all the work of PROJECTS/SERVICES  
6 and obtain all approvals by the COUNTY within the time frame indicated in  
7 Exhibit A except A/E shall not be responsible for any delay beyond the  
8 control of A/E.

9 f. In the event A/E fails to complete the work and obtain  
10 the approval of DIRECTOR in the time allowed, COUNTY shall have the option of  
11 completing the work by its own forces or by contract with another firm. The  
12 time allowed for A/E to complete the PROJECTS/SERVICES pursuant to this  
13 AGREEMENT shall be extended for delay caused by COUNTY in completing its work  
14 pursuant to this AGREEMENT which delay exceeds the agreed COUNTY review  
15 and/or approval time periods.

16 **C. Assistance by COUNTY**

17 1. COUNTY shall assign an appropriate staff member to work with  
18 A/E in connection with the work of this AGREEMENT. Said staff member's  
19 duties will consist of the giving of advice and consultations, assisting A/E  
20 in negotiations with other public agencies and private parties, miscellaneous  
21 items which in the judgment of A/E or COUNTY's staff warrant attention, and  
22 all other duties as may be described in Exhibit A.

23 2. All of the above activities, however, shall be the primary  
24 responsibility of A/E to schedule, initiate and carry through to completion.

25 **D. Non-Employment of COUNTY Personnel**

26 1. A/E agrees that it will ~~neither negotiate, offer, or give~~

1 ~~employment to any full-time, regular employee of COUNTY in professional~~  
2 ~~classifications of the same skills required for the performance of this~~  
3 ~~AGREEMENT who is involved in this Project in a participatory status during~~  
4 ~~the life of this AGREEMENT regardless of the assignments said employee may be~~  
5 ~~given or the days or hours employee may work~~ no full-time, regular employee  
6 of COUNTY, as applicable, who is involved in this Project, shall be given or  
7 offered employment by A/E in a participatory status during the life of this  
8 AGREEMENT regardless of the assignments said employee may be given or the  
9 days or hours employee may work. By accepting this AGREEMENT, A/E agrees not  
10 to negotiate any employment opportunity with any COUNTY full-time, as  
11 applicable, regular employee who is involved in this Project in professional  
12 classifications of the same skills required for the performance of this  
13 AGREEMENT.

14  
15 2. Nothing in this AGREEMENT shall be deemed to make A/E, or any  
16 of A/E's employees or agents, agents or employees of the COUNTY. A/E shall  
17 be an independent contractor and shall have responsibility for and control  
18 over the details and means for performing the work, provided that A/E is in  
19 compliance with the terms of this AGREEMENT. Anything in the AGREEMENT which  
20 may appear to give COUNTY the right to direct A/E as to the details of the  
21 performance of the work or to exercise a measure of control over A/E shall  
22 mean that A/E shall follow the desires of COUNTY, only in the results of the  
23 work.

24 **E. Non-Discrimination**

25 1. In the performance of this AGREEMENT, A/E agrees that it will  
26 comply with the requirements of the California Labor Code and not engage nor

1 permit any subcontractors to engage in discrimination in employment of  
2 persons because of the race, religious creed, color, national origin,  
3 ancestry, physical disability, mental disability, medical condition, marital  
4 status, or sex of such persons.

5           2. A/E acknowledges that a violation of this provision shall  
6 subject A/E to all the penalties imposed for a violation of the California  
7 Labor Code.

8           **F. Employee Eligibility Verification**

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

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

26           **G. Termination of Agreement for Cause**

1           1.     If A/E breaches any of the covenants or conditions of this  
2 AGREEMENT, COUNTY shall have the right to terminate this AGREEMENT upon ten  
3 (10) days written notice prior to the effective day of termination.

4           2.     A/E shall have the opportunity to cure the alleged breach  
5 prior to termination.

6           3.     In the event the alleged breach is not cured by A/E prior to  
7 termination, all work performed by A/E pursuant to this AGREEMENT, which  
8 work has been reduced to plans or other documents, shall be made available  
9 to COUNTY.

10           **H.     Termination for Convenience**

11           1.     Notwithstanding any other provision of the AGREEMENT, COUNTY  
12 may at any time, and without cause, terminate this AGREEMENT in whole or in  
13 part, upon not less than seven (7) calendar days' written notice to the A/E.  
14 Such termination shall be effected by delivery to the A/E of a notice of  
15 termination specifying the effective date of the termination and the extent  
16 of the Work to be terminated.

17           2.     A/E shall immediately stop work in accordance with the notice  
18 and comply with any other direction as may be specified in the notice or as  
19 provided subsequently by COUNTY.

20           3.     COUNTY shall pay the A/E for the Work completed prior to the  
21 effective date of the termination, and such payment shall be the A/E's sole  
22 remedy under this AGREEMENT.

23           4.     Under no circumstances will A/E be entitled to anticipatory  
24 or unearned profits, consequential damages, or other damages of any sort as  
25 a result of a termination or partial termination under this Paragraph.

26           5.     A/E shall insert in all subcontracts that the subcontractor

1 shall stop work on the date of and to the extent specified in a notice of  
2 termination, and shall require subcontractors to insert the same condition  
3 in any lower tier subcontracts.

4 **I. Term and ~~Maximum Compensation~~ Extension of Agreement**

5 The term of this AGREEMENT is for ~~three (3)~~ four (4) years  
6 commencing on the date of execution by the Board of Supervisors, with a  
7 maximum allowable compensation of four-hundred forty-thousand dollars  
8 (~~\$400,000~~), (\$440,000) except as permitted in Paragraph J below. The term  
9 expiration date shall be January 28, 2017.

10 **J. A/E Compensation and Extra Work**

11 For the PROJECTS/SERVICES authorized under this AGREEMENT, A/E  
12 shall be compensated in accordance with the following:

13 1. For completion and approval of all PROJECTS/SERVICES where  
14 "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES  
15 required by and ordered in writing by DIRECTOR which changes constitute a  
16 change in or departure from said approved portions of PROJECTS/SERVICES) is  
17 not authorized, compensation including reimbursables shall be described and  
18 payable as stipulated in Fee Schedule, herein after referred to as "Exhibit  
19 B", attached hereto and incorporated herein by reference.

20 2. Where extra work is authorized for PROJECTS/SERVICES:

21 a. The amount for Extra Work shall be determined using  
22 Exhibit B. Extra Work shall be required by and ordered in writing by  
23 DIRECTOR. DIRECTOR may order Extra Work not to exceed ten thousand dollars  
24 (\$10,000) for contracts of less than One hundred thousand (\$100,000), and may  
25 order Extra Work up to ten percent (10%) for contracts not exceeding two  
26 hundred fifty thousand dollars (\$250,000). For contracts greater than two



1 hundred fifty thousand dollars (\$250,000), Extra Work shall not exceed  
2 twenty-five thousand dollars (\$25,000) plus one percent (1%) of the original  
3 contract amount in excess of two hundred fifty thousand dollars (\$250,000).  
4 In no case shall Extra Work cumulatively exceed one hundred thousand dollars  
5 (\$100,000), unless authorized by the Board of Supervisors.

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

9           3. For partial completion of work of PROJECTS/SERVICES followed  
10 by default on part of A/E:

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

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

22           **K. Laws to be Observed**

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

26           **L. Errors and Omissions**

1           1. All PROJECTS/SERVICES submitted by A/E shall be complete and  
2 shall be carefully checked prior to submission. A/E understands that  
3 COUNTY's checking is discretionary, and A/E shall not assume that COUNTY will  
4 discover errors and/or omissions. If COUNTY discovers any errors or  
5 omissions prior to approving A/E's PROJECTS/SERVICES, the PROJECTS/SERVICES  
6 will be returned to A/E for correction. Should COUNTY or others discover  
7 errors or omissions in the work submitted by A/E after COUNTY's approval  
8 thereof, COUNTY's approval of A/E's PROJECTS/SERVICES shall not be used as a  
9 defense by A/E.

10           2. If A/E subcontracts portions of the architectural or  
11 engineering design PROJECTS/SERVICES to be performed under the terms of this  
12 AGREEMENT, A/E shall obtain evidence that such subcontractors have purchased  
13 Professional Liability Insurance to the same limits as described in Paragraph  
14 M (unless modified by Exhibit A) and containing the same clauses as the  
15 insurance required of A/E under the terms of this AGREEMENT. Evidence of  
16 subcontractor's insurance shall be submitted to COUNTY upon request.

17           **M. Insurance**

18           1. Prior to the provision of services under this AGREEMENT, A/E  
19 agrees to purchase all required insurance at A/E's expense and to deposit  
20 with COUNTY Certificates of Insurance, including all endorsements required  
21 herein, necessary to satisfy COUNTY that the insurance provisions of this  
22 AGREEMENT have been complied with and to keep such insurance coverage and the  
23 certificates therefor on deposit with COUNTY during the entire term of this  
24 AGREEMENT. COUNTY reserves the right to request that A/E provide COUNTY with  
25 copies of the declarations page showing all endorsements and a certified copy  
26 of the policy.

1           2.     In addition, all subcontractors performing work on behalf of  
2 A/E pursuant to this AGREEMENT shall obtain insurance subject to the same  
3 terms and conditions as set forth herein for A/E.

4           3.     All self-insured retentions (SIRs) or deductibles shall be  
5 clearly stated on the Certificate of Insurance. If no deductibles or SIRs  
6 apply, indicate this on the Certificate of Insurance with a zero (0) by the  
7 appropriate line of coverage. Any deductible or self-insured retention (SIR)  
8 in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall  
9 specifically be approved by the County Executive Office (CEO)/Office of Risk  
10 Management. A/E shall be responsible for reimbursement of any deductible to  
11 the insurer.

12           4.     If A/E fails to maintain insurance acceptable to COUNTY for  
13 the full term of this AGREEMENT, COUNTY may terminate this AGREEMENT.

14           A.     Qualified Insurer

15           1.     The policy or policies of insurance must be issued by an  
16 insurer licensed to do business in the state of California (California  
17 Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating)  
18 and VIII (Financial Size Category) as determined by the most current edition  
19 of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com.**

20 If the insurance carrier is not an admitted carrier in the state of  
21 California and does not have an A.M. Best rating of A-/VIII, the CEO/Office  
22 of Risk Management retains the right to approve or reject carrier after a  
23 review of the company's performance and financial ratings. If the non-  
24 admitted insurance carrier meets or exceeds the minimum A.M. Best rating of  
25 A-/VIII, the agency can accept the insurance.

26           2.     The policy or policies of insurance maintained by A/E shall

1 provide the minimum limits and coverage as set forth below:

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

11 B. Required Coverage Forms

12 1. The Commercial General Liability coverage shall be written on  
13 Insurance Service Office (ISO) form CG 00 01, or substitute form providing  
14 liability coverage as broad.

15 2. The Business Auto Liability coverage shall be written on ISO  
16 form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing  
17 liability coverage as broad.

18 C. Required Endorsements

19 1. The Commercial General Liability policy shall contain the  
20 following endorsements, which shall accompany the Certification of Insurance:

21 a) An Additional Insured endorsement using ISO form CG 20 10  
22 or CG 20 33 or a form at least broad, naming the County of  
23 Orange, hereinafter referred to as "COUNTY", their elected  
24 and appointed officials, and employees as Additional  
25 Insured.

26 b) A primary non-contributing endorsement evidencing that the

1 A/E's insurance is primary and any insurance maintained by  
2 the COUNTY shall be excess and non-contributing.

3 2. The Worker's Compensation policy shall contain a waiver of  
4 subrogation endorsement waiving all rights of subrogation against COUNTY and  
5 members of the Board of Supervisors, its elected and appointed officials,  
6 officers, employees and agents.

7 3. All insurance policies required by this AGREEMENT shall waive  
8 all rights of subrogation against COUNTY, and members of the Board of  
9 Supervisors, its elected and appointed officials, officers, agents and  
10 employees when acting within the scope of their appointment or employment.

11 4. All insurance policies required by this AGREEMENT shall give  
12 COUNTY thirty (30) days notice in the event of cancellation and ten (10) days  
13 notice for non-payment of premium. This shall be evidenced by policy  
14 provisions or an endorsement separate from the Certificate of Insurance.

15 5. If A/E's Professional Liability policy is a "claims made"  
16 policy, A/E shall agree to maintain professional liability coverage for two  
17 years following completion of contract.

18 6. The Commercial General Liability policy shall contain a  
19 severability of interests' clause (standard in the ISO CG 001 policy).

20 7. Insurance certificates should be forwarded to the COUNTY  
21 address listed on the solicitation.

22 8. If the A/E fails to provide the insurance certificates and  
23 endorsements within seven (7) days of notification by COUNTY, award may be  
24 made to the next qualified vendor.

25 9. COUNTY expressly retains the right to require A/E to increase  
26 or decrease insurance of any of the above insurance types throughout the term

1 of this AGREEMENT. Any increase or decrease in insurance will be as deemed  
2 by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

3 10. COUNTY shall notify A/E in writing of changes in the  
4 insurance requirements. If A/E does not deposit copies of acceptable  
5 certificates of insurance and endorsements with COUNTY incorporating such  
6 changes within thirty (30) days of receipt of such notice, this AGREEMENT may  
7 be in breach without further notice to A/E, and COUNTY shall be entitled to  
8 all legal remedies.

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

#### 14 N. Indemnification

15 A/E agrees to, indemnify, defend with counsel approved in writing  
16 by COUNTY, and hold COUNTY, the County of Orange ("COUNTY"), their elected  
17 and appointed officials, officers, employees, agents and those special  
18 districts and agencies which COUNTY'S Board of Supervisors acts as the  
19 governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or  
20 liability of any kind or nature, including but not limited to personal injury  
21 or property damage, arising out of, pertaining to, or relating to the  
22 negligence, recklessness, or willful misconduct of the A/E. If judgment is  
23 entered against A/E and COUNTY by a court of competent jurisdiction because  
24 of the concurrent active negligence of A/E and COUNTY or COUNTY INDEMNITEES,  
25 A/E and COUNTY agree that liability will be apportioned as determined by the  
26 court. Neither party shall request a jury apportionment. Notwithstanding  
anything stated above, nothing contained herein shall relieve A/E of any

1 insurance requirements or obligations created elsewhere in this AGREEMENT.

2 **O. Award of Construction Agreement and Other Future Agreements**

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

12 **P. Amendments**

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

18 **Q. Successors and Assigns**

19 The terms and provisions of this AGREEMENT shall be binding upon  
20 and inure to the benefit of the parties hereto and their successors and  
21 assigns.

22 **R. Entirety**

23 This AGREEMENT contains the entire agreement between the parties  
24 with respect to the matters provided for herein.

25 **S. Severability**

26 If any part of this AGREEMENT is held, determined, or adjudicated

1 to be illegal, void, or unenforceable by a court of competent jurisdiction,  
2 the remainder of this AGREEMENT shall be given effect to the fullest extent  
3 reasonably possible.

4 **T. Binding Obligation**

5 The PARTIES to this AGREEMENT represent and warrant that this  
6 AGREEMENT has been duly authorized and executed and constitutes the legally  
7 binding obligation of their respective organization or entity enforceable in  
8 accordance with its terms.

9 **U. Governing Law and Venue**

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

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

24 **V. Child Support Enforcement Requirements**

25 1. To comply with child support enforcement requirements of the  
26 COUNTY, within thirty (30) days of notification of selection for award of



1 PROJECTS/SERVICES, A/E agrees to complete and furnish to DIRECTOR the  
2 information required in County of Orange Child Support Enforcement Contract  
3 Certification, hereinafter referred to as "Exhibit C," attached hereto and  
4 incorporated herein by reference.

5           2.     If A/E is not a corporation, general partnership, limited liability  
6 partnership, or limited liability company, A/E shall, within thirty (30) days of  
7 notification of selection of award of PROJECTS/SERVICES, complete and furnish to  
8 DIRECTOR the information required in EDD Independent Contract Reporting Requirements,  
9 hereinafter referred to as "Exhibit D," attached hereto and incorporated  
10 herein by reference.

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

14           **W.     Ownership of Documents**

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

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

1 of COUNTY.

2 **X. Confidentiality**

3 1. All ideas, memoranda, specifications, plans, procedures,  
4 drawings, descriptions, and all written or other information submitted to  
5 A/E in connection with the performance of this AGREEMENT shall be held  
6 confidential by A/E and/or anyone acting under the supervision of A/E and  
7 shall not, without the prior written consent of COUNTY, be used for any  
8 purposes other than the performance of the PROJECTS/SERVICES described in  
9 Exhibit A, nor be disclosed to any person, partnership, company, corporation  
10 or agency, not connected with the performance of the PROJECTS/SERVICES.

11 2. Nothing furnished to A/E which is generally known among  
12 counties in Southern California shall be deemed confidential.

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

17 **Y. Publication**

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

1           2. The A/E agrees that it will not issue any news releases or make  
2 any contact with the media in connection with either the award of this  
3 AGREEMENT or any subsequent amendment of, or effort under this AGREEMENT. A/E  
4 must first obtain review and approval of said media contact from the COUNTY  
5 through the COUNTY'S Project Manager. Any requests for interviews or  
6 information received by the media should be referred directly to the COUNTY.  
7 A/E's are not authorized to serve as a media spokespersons for COUNTY  
8 projects without first obtaining permission from the COUNTY Project Manager.

9           **Z. Records and Audit/Inspections**

10           1. A/E shall keep an accurate record of time expended by A/E  
11 and/or consultants employed by A/E in the performance of this AGREEMENT.

12           2. Within ten (10) days of COUNTY's written request, A/E shall  
13 allow COUNTY or authorized State or Federal agencies or any duly authorized  
14 representative to have the right to access, examine, audit, excerpt, copy or  
15 transcribe any pertinent transaction, activity, time cards or other records  
16 relating to this AGREEMENT.

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

21           4. Should A/E cease to exist as a legal entity, records  
22 pertaining to this AGREEMENT shall be forwarded within a reasonable period of  
23 time not to exceed sixty (60) days to its successor in interest or surviving  
24 entity in a merger or acquisition, or, in the event of liquidation, to  
25 COUNTY.

26           **AA. Notices**

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

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

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

16           For A/E:

17                   Name:           AECOM  
18                   Address:    999 Town & Country Road, 4<sup>th</sup> Floor  
19                   City:       Orange, CA 92658  
20                   Attn:       Anne Pietro  
                    Phone:      714-648-2013  
                    E-mail:     anne.pietro@aecom.com  
                    Fax:        714-567-2760

21           For COUNTY: Please provide

22                   Name:       County of Orange/OC Parks Design  
23                   Address:    13042 Old Myford Road  
24                   City:       Irvine, CA 92602-2304  
25                   Attn:       Scott Thomas, Manager - OCP Design  
                    Phone:      949-923-3757  
                    E-mail:     Scott.Thomas@ocparks.com  
                    Fax:        949-923-3338

26           **AB. Attorney's Fees**

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

4 **AC. Interpretation**

5 1. AGREEMENT has been negotiated at arm's length and between  
6 persons sophisticated and knowledgeable in the matters dealt with in this  
7 AGREEMENT.

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

12 3. Each PARTY further acknowledges that they have not been  
13 influenced to any extent whatsoever in executing this AGREEMENT by any other  
14 PARTY hereto or by any person representing them, or both.

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

19 5. The provisions of this AGREEMENT shall be interpreted in a  
20 reasonable manner to affect the purpose of the PARTIES and this AGREEMENT.

21 **AD. Headings**

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

26 **AE. Acceptance**

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

4 **AF. Consent to Breach not Waiver**

5 1. No term or provision of this AGREEMENT shall be deemed waived  
6 and no breach excused, unless such waiver or consent shall be in writing and  
7 signed by the party claimed to have waived or consented.

8 2. Any consent by any party to, or waiver of, a breach by the  
9 other, whether express or implied, shall not constitute consent to, waiver  
10 of, or excuse for any other different or subsequent breach.

11 **AG. Remedies Not Exclusive**

12 The remedies for breach set forth in this AGREEMENT are cumulative  
13 as to one another and as to any other provided by law, rather than exclusive;  
14 and the expression of certain remedies in this AGREEMENT does not preclude  
15 resort by either party to any other remedies provided by law.

16 **AH. Independent Contractor**

17 1. As referenced in Section D of this AGREEMENT, A/E shall be  
18 considered an independent contractor.

19 2. Neither A/E, its employees nor anyone working under A/E shall  
20 qualify for workers' compensation or other fringe benefits of any kind  
21 through COUNTY.

22 **AI. Bills and Liens**

23 A/E shall pay promptly all indebtedness for labor, materials and  
24 equipment used in performance of the work. A/E shall not permit any lien or  
25 charge to attach to the work or the premises, **but if any does so attach, A/E**  
26 **shall promptly procure its release and, in accordance with the requirements**

1 of the indemnification paragraph above, indemnify, defend, and hold COUNTY  
2 harmless and be responsible for payment of all costs, damages, penalties and  
3 expenses arising from or related thereto.

4 **AJ. Changes**

5 A/E shall make no changes in the work or perform any additional  
6 work without the COUNTY'S specific written approval.

7 **AK. Assignment**

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

17 **AL. Changes in Ownership**

18 A/E agrees that if there is a change or transfer in ownership,  
19 including but not limited to merger by acquisition, of A/E's business prior  
20 to completion of this AGREEMENT, the new owners shall be required under terms  
21 of sale or other transfer to assume A/E's duties and obligations contained in  
22 this AGREEMENT and to obtain the written approval of COUNTY of such merger or  
23 acquisition, and complete the obligations and duties contained in the  
24 AGREEMENT to the satisfaction of COUNTY.

25 **AM. Force Majeure**

26 A/E shall not be assessed with damages or unsatisfactory

1 performance penalties during any delay beyond the time named for the  
2 performance of this AGREEMENT caused by any act of God, war, civil disorder,  
3 employment strike or other cause beyond its reasonable control, provided A/E  
4 gives written notice of the cause of the delay to COUNTY within thirty-six  
5 (36) hours of the start of the delay and A/E avails himself of any available  
6 remedies.

7 **AN. Compliance with Laws**

8 1. A/E represents and agrees that services to be provided under  
9 this AGREEMENT shall fully comply, at A/E's expense, with all standards,  
10 laws, statutes, restrictions, ordinances, requirements, and regulations  
11 (collectively "laws"), including, but not limited to those issued by COUNTY  
12 in its governmental capacity and all other laws applicable to the  
13 PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and accepted  
14 by COUNTY.

15 2. A/E acknowledges that COUNTY is relying on A/E for such  
16 compliance, and pursuant to the requirements of the indemnification paragraph  
17 above, **A/E agrees that it shall defend, indemnify and hold COUNTY and COUNTY**  
18 **INDEMNITEES harmless from all liability, damages, costs and expenses arising**  
19 **from or related to a violation of such laws.**

20 **AO. Calendar Days**

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

23 **AP. Breach of Contract**

24 The failure of the A/E to comply with any of the provisions,  
25 covenants or conditions of this AGREEMENT shall be a material breach of this  
26 AGREEMENT. In such event, in addition to any other remedies available at law,



1 in equity, or otherwise specified in this AGREEMENT, the COUNTY may:

2 1. afford the A/E written notice of the breach and ten (10)  
3 calendar days or such shorter time that may be specified in this AGREEMENT  
4 within which to cure the breach;

5 2. discontinue payment to the A/E for and during the period in  
6 which the A/E is in breach; and

7 3. offset those monies disallowed pursuant to the above, against  
8 any monies billed by the A/E but yet unpaid by the COUNTY.

9 **AQ. Default**

10 1. In the event any equipment or service furnished by the A/E in  
11 the performance of this AGREEMENT should fail to conform to the  
12 specifications therein within one (1) calendar year from the COUNTY'S  
13 acceptance of the equipment or service, or any performance period  
14 specifically specified within the specifications or AGREEMENT, whichever is  
15 greater, the COUNTY may reject same, and it shall become the duty of the A/E  
16 to reclaim and remove the items without expense to the COUNTY and to  
17 immediately replace all such rejected equipment or service with others  
18 conforming to such specifications, provided that should the A/E fail, neglect  
19 or refuse to do so within one hundred and twenty (120) calendar days, the  
20 COUNTY shall have the right to purchase on the open market a corresponding  
21 quantity of any such equipment or service and to deduct from any monies due  
22 or that may thereafter become due to the A/E the difference between the price  
23 specified in this AGREEMENT and the actual cost to the COUNTY.

24 2. In the event the A/E shall fail to make prompt delivery as  
25 specified of any equipment or service, the same conditions as to the rights  
26 of the COUNTY to purchase on the open market and to reimbursement set forth

1 above shall apply, except as otherwise provided in this AGREEMENT.

2           3. In the event of the cancellation of this AGREEMENT, either in  
3 whole or in part, by reason of the default or breach by the A/E, any loss or  
4 damage sustained by the COUNTY in procuring any equipment or service which  
5 the A/E agreed to supply under this AGREEMENT shall be borne and paid for by  
6 the A/E.

7           4. Default shall include failure to carry out any of the  
8 requirements of this AGREEMENT, including, but not limited to not providing  
9 enough properly skilled workers or proper materials, persistently  
10 disregarding laws and or ordinances, not proceeding with the  
11 PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating  
12 any provision of this AGREEMENT.

13           5. Upon termination of the AGREEMENT with A/E, the COUNTY may  
14 begin negotiations with a third-party A/E to provide goods and/or  
15 PROJECTS/SERVICES as specified in this AGREEMENT.

16           6. The right of either party to terminate this AGREEMENT  
17 hereunder shall not be affected in any way by its waiver of or failure to  
18 take action with respect to any previous default.

19           **AR. Conflict of Interest Contractor Personnel**

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

25           2. A/E's efforts shall include, but not be limited to  
26 establishing precautions to prevent its employees or agents from: making,

1 receiving, providing or offering gifts, entertainment, payments, loans or  
2 other considerations which could be deemed to appear to influence individuals  
3 to act contrary to the best interests of the COUNTY.

4 **AS. Title to Data**

5 1. All materials, documents, data or information obtained from  
6 the COUNTY data files or any COUNTY medium furnished to the A/E in the  
7 performance of this AGREEMENT, will at all times remain the property of the  
8 COUNTY. Such data or information may not be used or copied for direct or  
9 indirect use by the A/E after completion or termination of this AGREEMENT  
10 without the express written consent of the COUNTY.

11 2. All materials, documents, data or information, including  
12 copies furnished by COUNTY and loaned to A/E for his temporary use, must be  
13 returned to the COUNTY at the end of this AGREEMENT unless otherwise  
14 specified by the DIRECTOR.

15 **AT. Availability of Funds**

16 The obligation of COUNTY is subject to the availability of funds  
17 appropriated for this purpose, and nothing herein shall be construed as  
18 obligating the COUNTY to expend or as involving the COUNTY in any contract or  
19 other obligation for future payment of money in excess of appropriations

20 **AU. Contract Construction**

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

26 **AV. Waiver of Jury Trial**

1 Each PARTY acknowledges that it is aware of and has had the  
2 opportunity to seek advice of counsel of its choice with respect to its  
3 rights to trial by jury, and each PARTY, for itself and its successors,  
4 creditors, and assigns, does hereby expressly and knowingly waive and release  
5 all such rights to trial by jury in any action, proceeding or counterclaim  
6 brought by any PARTY hereto against the other (and/or against its officers,  
7 directors, employees, agents, or subsidiary or affiliated entities) on or  
8 with regard to any matters whatsoever arising out of or in any way connected  
9 with this AGREEMENT and/or any other claim of injury or damage.

10 //

11 **IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT on  
12 the dates opposite their respective signatures:

AECOM Technical Services, a California Corporation,

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

14 By \_\_\_\_\_  
Signature

15 Matt Ulukaya, Vice President  
16 Print Name & Title

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

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

19 By \_\_\_\_\_  
Signature

20 David Huchel, Assistant Secretary  
21 Print Name & Title

22 (If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.)

23 COUNTY OF ORANGE, a political subdivision of  
24 the State of California

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

26 By \_\_\_\_\_

Chair of the Board of Supervisors  
Orange County, CA

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec 25103, Reso 79-1535  
Attest:

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

\_\_\_\_\_

Susan Novak  
Clerk of the Board of Supervisors  
County of Orange, California

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

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

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

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