

## ATTACHMENT B

### A G R E E M E N T

**THIS AGREEMENT**, hereinafter referred to as "**AGREEMENT**," for purposes of identification hereby numbered D13-101, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

**BY AND AMONGST**

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

**AND**

Orange County Flood Control District, a body corporate and politic, hereinafter referred to as "DISTRICT"

**AND**

The Planning Center, 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 and/or DISTRICT as applicable, requires professional services to accomplish projects and/or services ("PROJECTS/SERVICES") as described in Exhibit A Scope Of Work for On-Call Environmental Document Preparation Services, hereinafter referred to as "Exhibit A," attached hereto and incorporated herein by reference; and

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

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

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### A. Retainer

1. COUNTY and/or DISTRICT, as applicable, does hereby retain A/E to perform the PROJECTS/SERVICES as required by this AGREEMENT.

2. A professional, duly registered in the State of California, who shall be assigned to PROJECTS/SERVICES and whose services are offered by A/E and accepted by COUNTY and/or DISTRICT, as applicable, is JoAnn Hadfield.

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

a. None

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

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

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### B. PROJECTS/SERVICES

#### 1. Description of PROJECTS/SERVICES

a. PROJECTS/SERVICES to be performed by A/E shall consist of the work as specified herein and as required in Exhibit A. If in the event Exhibit A shall be in conflict with any provision of this AGREEMENT, the wording as set forth in Exhibit A shall prevail.

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

#### 2. Design Criteria and Standards

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

#### 3. Scheduling

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

b. A/E shall allow at least five (5) working days for COUNTY

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and/or DISTRICT, as applicable, review of progress work schedule. In planning work A/E should anticipate and allow ten (10) working days for COUNTY and/or DISTRICT, as applicable, review of each submittal required in Exhibit A.

c. A/E shall meet on an "as-needed" basis as determined by DIRECTOR) with COUNTY and/or DISTRICT, as applicable, to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.

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

e. A/E shall complete all the work of PROJECTS/SERVICES and obtain all approvals by the COUNTY and/or DISTRICT, as applicable, within the time frame indicated in Exhibit A except A/E shall not be responsible for any delay beyond the control of A/E.

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

### **C. Assistance by COUNTY and/or DISTRICT, as applicable**

1. COUNTY and/or DISTRICT, as applicable, shall assign an appropriate staff member to work with A/E in connection with the work of this AGREEMENT. Said staff member's duties will consist of the giving of advice

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and consultations, assisting A/E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A/E or COUNTY's and/or DISTRICT's, as applicable, staff warrant attention, and all other duties as may be described in Exhibit A.

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

### **D. Non-Employment of COUNTY and/or DISTRICT Personnel**

1. A/E agrees that no full-time, regular employee of COUNTY and/or DISTRICT, as applicable, who is involved in this Project shall be given or offered employment by A/E in a participatory status during the life of this AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work. By accepting this AGREEMENT, A/E agrees not to negotiate any employment opportunity with any COUNTY and/or DISTRICT full-time, as applicable, regular employee who is involved in this Project in professional classifications of the same skills required for the performance of this AGREEMENT.

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

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### **E. Non-Discrimination**

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

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

### **F. Employee Eligibility Verification**

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

2. A/E shall indemnify, defend with counsel approved in writing by COUNTY and/or DISTRICT, as applicable, and hold harmless, the COUNTY and/or DISTRICT, as applicable, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against A/E

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or the COUNTY and/or DISTRICT, as applicable, or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this AGREEMENT.

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

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

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

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

### **H. Termination for Convenience**

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

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

3. COUNTY and/or DISTRICT, as applicable, shall pay the A/E for

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the Work completed prior to the effective date of the termination, and such payment shall be the A/E's sole remedy under this AGREEMENT.

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

5. A/E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

### **I. Term and Maximum Compensation**

The term of this AGREEMENT is for three (3) years commencing on the date of execution by the Board of Supervisors, with a maximum allowable compensation of four hundred thousand dollars (\$400,000), except as permitted in Paragraph J below.

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

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

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

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

a. The amount for Extra Work shall be determined using

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Exhibit B. Extra Work shall be required by and ordered in writing by DIRECTOR. DIRECTOR may order Extra Work not to exceed ten thousand dollars (\$10,000) for contracts of less than One hundred thousand (\$100,000), and may order Extra Work up to ten percent (10%) for contracts not exceeding two hundred fifty thousand dollars (\$250,000). For contracts greater than two hundred fifty thousand dollars (\$250,000), Extra Work shall not exceed twenty-five thousand dollars (\$25,000) plus one percent (1%) of the original contract amount in excess of two hundred fifty thousand dollars (\$250,000). In no case shall Extra Work cumulatively exceed one hundred thousand dollars (\$100,000), unless authorized by the Board of Supervisors.

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

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

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

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

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breach of the AGREEMENT.

### **K. Laws to be Observed**

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

### **L. Errors and Omissions**

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

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

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### **M. Insurance**

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

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

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

4. If A/E fails to maintain insurance acceptable to COUNTY and/or DISTRICT, as applicable, for the full term of this AGREEMENT, DISTRICT may terminate this AGREEMENT.

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### A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted insurance carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

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

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### B. Required Coverage Forms

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

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

### C. Required Endorsements

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

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

b) A primary non-contributing endorsement evidencing that the A/E's insurance is primary and any insurance maintained by the COUNTY and/or DISTRICT, as applicable, shall be excess and non-contributing.

2. The Worker's Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against COUNTY and/or DISTRICT, as applicable, and members of the Board of Supervisors, its elected and appointed officials, officers, employees and agents.

3. All insurance policies required by this AGREEMENT shall waive all rights of subrogation against COUNTY and/or DISTRICT, as applicable, and members of the Board of Supervisors, its elected and appointed officials,

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officers, agents and employees when acting within the scope of their appointment or employment.

4. A/E shall notify COUNTY and/or DISTRICT, as applicable, within 14 days of any policy cancellation and provide a copy of the cancellation notice to COUNTY and/or DISTRICT.

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

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

7. Insurance certificates should be forwarded to the COUNTY and/or DISTRICT, as applicable, address listed on the solicitation.

8. If the A/E fails to provide the insurance certificates and endorsements within fourteen (14) days of notification by COUNTY and/or DISTRICT, as applicable, award may be made to the next qualified vendor.

9. COUNTY and/or DISTRICT, as applicable, expressly retains the right to require A/E to increase or decrease insurance of any of the above insurance types throughout the term of this AGREEMENT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY and/or DISTRICT, as applicable.

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

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

### N. Indemnification

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

### O. Award of Construction Agreement and Other Future Contracts

A/E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and COUNTY and/or DISTRICT, as applicable, policy prohibit, as an impermissible conflict of interest, the award of a contract for the construction of the

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project(s) on which A/E performed architectural-engineering services under this A/E AGREEMENT. A/E is hereby informed that these statutes and regulations could also prohibit the award to A/E of design or other contracts on future phases related to tasks performed by A/E under this AGREEMENT. This prohibition applies also to a subcontractor of or parent company of the firm that performed architectural-engineering tasks under this AGREEMENT.

### **P. Amendments**

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

### **Q. Successors and Assigns**

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

### **R. Entirety**

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

### **S. Severability**

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

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### **T. Binding Obligation**

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

### **U. Governing Law and Venue**

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

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

### **V. Child Support Enforcement Requirements**

1. To comply with child support enforcement requirements of the COUNTY and/or DISTRICT, as applicable, within thirty (30) days of notification of selection for award of PROJECTS/SERVICES, A/E agrees to complete and furnish to DIRECTOR the information required in County of Orange Child Support Enforcement Contract Certification, hereinafter referred to as

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"Exhibit C," attached hereto and incorporated herein by reference.

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

3. It is expressly understood that this data will be transmitted by COUNTY and/or DISTRICT as applicable, to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes.

### **W. Ownership of Documents**

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

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

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### **X. Confidentiality**

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

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

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

### **Y. Publication**

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

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newspapers, magazines, etc., are to be administered only after COUNTY and/or DISTRICT, as applicable, approval.

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

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

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

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

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

4. Should A/E cease to exist as a legal entity, records

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pertaining to this AGREEMENT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to COUNTY and/or DISTRICT, as applicable.

### **AA. Notices**

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

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

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

For A/E:

Name:	The Planning Center
Address:	1580 Metro Drive
City:	Costa Mesa, California 92626
Attn:	JoAnn Hadfield
Phone:	714-966-9220
E-mail:	jhadfield@planningcenter.com
Fax:	714-966-9221

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For COUNTY AND/OR DISTRICT:

Name: OC Public Works/Project Management  
Address: 300 North Flower Street  
City: Santa Ana, CA 92703-5000  
Attn: Nardy Khan  
Phone: 714-647-3906  
E-mail: nardy.khan@ocpw.ocgov.com  
Fax: 714-667-7520

### **AB. Attorney's Fees**

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

### **AC. Interpretation**

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

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

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

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

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

## ATTACHMENT B

### **AD. Headings**

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

### **AE. Acceptance**

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

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

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

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

### **AG. Remedies Not Exclusive**

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

### **AH. Independent Contractor**

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

2. Neither A/E, its employees nor anyone working under A/E shall

## ATTACHMENT B

qualify for workers' compensation or other fringe benefits of any kind through COUNTY and/or DISTRICT, as applicable.

### **AI. Bills and Liens**

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

### **AJ. Changes**

A/E shall make no changes in the work or perform any additional work without the COUNTY's and/or DISTRICT's, as applicable, specific written approval.

### **AK. Assignment**

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

## ATTACHMENT B

### **AL. Changes in Ownership**

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

### **AM. Force Majeure**

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

### **AN. Compliance with Laws**

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

2. A/E acknowledges that COUNTY and/or DISTRICT, as applicable,

## ATTACHMENT B

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

### **AO. Calendar Days**

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

### **AP. Breach of Contract**

The failure of the A/E to comply with any of the provisions, covenants or conditions of this AGREEMENT shall be a material breach of this AGREEMENT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this AGREEMENT, the COUNTY and/or DISTRICT, as applicable, may:

1. afford the A/E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this AGREEMENT within which to cure the breach;
2. discontinue payment to the A/E for and during the period in which the A/E is in breach; and
3. offset those monies disallowed pursuant to the above, against any monies billed by the A/E but yet unpaid by the COUNTY and/or DISTRICT, as applicable.

### **AQ. Default**

1. In the event any equipment or service furnished by the A/E in the performance of this AGREEMENT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY and/or

## ATTACHMENT B

DISTRICT, as applicable, acceptance of the equipment or service, or any performance period specifically specified within the specifications or AGREEMENT, whichever is greater, the COUNTY and/or DISTRICT, as applicable, may reject same, and it shall become the duty of the A/E to reclaim and remove the items without expense to the COUNTY and/or DISTRICT, as applicable, and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A/E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY and/or DISTRICT, as applicable, shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A/E the difference between the price specified in this AGREEMENT and the actual cost to the COUNTY and/or DISTRICT, as applicable.

2. In the event the A/E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY and/or DISTRICT, as applicable, to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this AGREEMENT.

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

4. Default shall include failure to carry out any of the requirements of this AGREEMENT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently

## ATTACHMENT B

disregarding laws and or ordinances, not proceeding with the PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this AGREEMENT.

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

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

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

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

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

### **AS. Title to Data**

1. All materials, documents, data or information obtained from the COUNTY and/or DISTRICT, as applicable, data files or any COUNTY and/or DISTRICT, as applicable, medium furnished to the A/E in the performance of

## ATTACHMENT B

this AGREEMENT, will at all times remain the property of the COUNTY and/or DISTRICT, as applicable. Such data or information may not be used or copied for direct or indirect use by the A/E after completion or termination of this AGREEMENT without the express written consent of the COUNTY and/or DISTRICT, as applicable.

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

### **AT. Availability of Funds**

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

### **AU. Contract Construction**

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

### **AV. Waiver of Jury Trial**

Each PARTY acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its

## ATTACHMENT B

rights to trial by jury, and each PARTY, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any PARTY hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this AGREEMENT and/or any other claim of injury or damage.

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ATTACHMENT B

Agreement No. D13-101

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

The Planning Center, a California Corporation

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

By   
Keith McCann, Chief Executive Officer

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

By   
JoAnn Hadfield, Principal

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

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

By \_\_\_\_\_  
Chair of the Board of Supervisors  
Orange County, CA

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

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

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: 1/15/2014

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

By:   
Deputy

**EXHIBIT A TO AGREEMENT D13-101  
GENERAL SCOPE OF WORK  
ON-CALL ENVIRONMENTAL SERVICES**

**I. INTRODUCTION**

OC Public Works, on behalf of the County of Orange ("COUNTY") and the Orange County Flood Control District ("DISTRICT"), requires supplemental professional services to meet workload demands and project scheduling commitments. The professional services required consists of Environmental Document Preparation Services for flood control or road projects, (hereinafter referred to as "PROJECT" or "PROJECTS"). In order to supplement COUNTY's and/or DISTRICT's existing resources, A/E shall provide to COUNTY and/or DISTRICT "on-call" A/E services for use by OC Public Works on an "as-needed" basis for environmental services. No specified amount of work is guaranteed to A/E. However, the amount of contracted work that will be required on an "as-needed" basis shall not exceed four hundred thousand dollars (\$400,000), excluding extra work, unless otherwise amended by the parties and approved by the COUNTY's/DISTRICT's Board of Supervisors. Throughout the remainder of this "Scope of Work" the term "STAFF" will refer to the COUNTY/DISTRICT staff who is administering the AGREEMENT on behalf of COUNTY and/or DISTRICT, unless stated otherwise.

**II. PURPOSE**

The purpose of this Scope of Work is to describe the "on-call" professional and sub-professional environmental document preparation services to be provided as part of this AGREEMENT, and to describe the administrative process of the AGREEMENT.

**III. DESCRIPTION OF WORK**

The requested services consist of the preparation of initial studies and subsequent environmental documentation in compliance with the California Environmental Quality Act (CEQA). The environmental documentation process shall, at a minimum, include the A/E's review of existing environmental documents, visiting the PROJECT site, assessing environmental conditions and impacts, identifying and evaluating alternative concepts, if required, based on existing and ultimate conditions, and producing a preliminary and final revised document following review by OC Public Works. To ensure adequate document preparation, A/E shall attend PROJECT status meetings with staff and with others as required to discuss status and/or details of the PROJECT. Additional related Support Services as described herein might also be requested such as the preparation of environmental permit applications, supporting documentation, and/or follow up submittals, as determined appropriate by STAFF. These services include, but are not limited to: conducting necessary biological resources surveys; identifying the extent of jurisdictional wetlands/waters of the U.S. Army Corps of Engineers Manual; establishing appropriate mitigation per Methods of Assigning Mitigation Ratios for Impacts to Riparian Systems (Dr. Stein); identifying, evaluating and developing mitigation plans for impacted waters and wetlands in accordance with regulatory guidelines; preparing appropriate state and federal regulatory permit/agreement applications or notices. Specific tasks may include the following:

**A. PREPARATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DOCUMENTATION**

1. Initial Scoping/Project Study Session(s): A/E shall attend and/or, at the request of OC Public Works, direct scoping sessions to ensure that all environmental project-related issues are identified and that any relevant comments from outside sources are addressed in the preparation of the environmental document. At the direction of OC Public Works, A/E shall also attend requisite review/study sessions to maintain currency with PROJECT and the on-going planning process.
2. Initial Study/Notice of Preparation: At the discretion of OC Public Works, A/E shall review/or prepare the Initial Study (IS) and/or Notice of Preparation (NOP) to ensure that the nature and extent of environmental issues are properly identified. A/E shall also review/prepare a list of agencies to receive the IS or NOP and make recommendations to expand or reduce the list based upon professional experience and knowledge of the PROJECT.
3. Documents/PROJECT Research: A/E shall review and evaluate all relevant environmental and historical documentation to assure completeness of preparation. PROJECT site visits and evaluation of relevant supplemental studies, data and reports shall also occur during is phase.
4. Screen Check /Draft Environmental Document: A/E, under direction from OC Public Works, shall prepare screen check /draft environmental documentation for review. An administrative draft (screen check document), if determined necessary by OC Public Works, will be the precursor to the draft environmental document. It is anticipated that this work effort will encompass all research necessary to establish full review of environmental conditions, identification of environmental impacts associated with the PROJECT, evaluation of proposed mitigation measures and preparation of any additional mitigation measures to eliminate or reduce environmental impacts to an acceptable level. A/E will be held accountable for the technical accuracy of environmental review as well as statutory adequacy of the draft environmental document.
5. Revised Draft Document/Notice of Completion: A/E shall revise screen check/draft environmental document as directed by OC Public Works. If, upon OC Public Works review, additional revisions are required or additional comments are necessary, A/E shall complete them prior to any printing of a public review document and/or distribution of a Notice of Completion, (NOC).
6. Public Review/Response to Comments: At the end of any public review period required, comments received by OC Public Works or other County agency regarding the PROJECT shall be forwarded to A/E to respond. A/E shall address each comment as it relates to the adequacy of the environmental document. All responses prepared by A/E shall be reviewed by OC Public Works. Any responses found deficient will be revised to the

## ATTACHMENT B

satisfaction of OC Public Works until all required responses are approved by OC Public Works and any necessitated environmental document revisions are completed. Where appropriate, A/E shall ensure that the distribution of responses is made to each public agency commenting at least ten (10) days prior to any certification hearing.

7. Mitigation Monitoring Program/ Facts and Findings/Statement of Overriding considerations: A/E shall, at discretion of OC Public Works, review and/or prepare a Mitigation Monitoring Program, CEQA Facts and Findings for the PROJECT and a Statement of Overriding Consideration, where appropriate, in accordance with applicable statutes.
8. Attendance at Public Hearings: A/E may be requested to coordinate and/or attend public meetings/hearings and provide testimony regarding the adequacy of the prepared environmental document or respond to relevant environmental comments.

COUNTY's OC Public Works/Land Use Planning/Environmental Department (OC Public Works/LUP/E) will serve as the "lead agency" for CEQA compliance. LUP/E will make the environmental determination regarding the appropriateness of a "ND" or "categorical exemption" in satisfying the requirements of CEQA.

### **B. CONDUCT BIOLOGICAL RESOURCES SURVEYS**

1. A/E shall perform biological resources surveys to a level adequate to obtain the required Clean Water Act Section 404 individual permits or nationwide permits from the U.S Army Corps of Engineers; Section 1600 Lake or Streambed Alteration Agreements from the California Department of Fish and Game; Section 401 discharge permits from the Regional Water Quality Control Board; and Coastal Zone Management Consistency approval from the Coastal Commission.
2. A/E shall identify all sensitive (state and/or federally-listed) plant and/or animal species. If sensitive species are identified that may be impacted by the project, A/E shall assist in the development of a mitigation strategy for processing a Section 7 Consultation and obtaining a Biological Opinion from the U.S. Fish and Wildlife Service.
3. A/E shall provide both a quantitative and qualitative assessment of habitat values using Dr. Stein's "Methods of Assigning Ratios for Riparian Systems," the California Rapid Assessment Method (CRAM) and/or other guidelines established by the regulatory agencies.

### **C. PREPARATION OF REGULATORY PERMIT APPLICATIONS OR NOTICES**

These permits include but are not limited to:

#### **Federal Regulatory Permits:**

## ATTACHMENT B

1. U.S. Army Corps of Engineers Section 404 permits (nationwide or individual), Section 10 of the Rivers and Harbors Act of 1899, and the preparation of any alternatives analysis required.
2. U.S. Fish and Wildlife Service Section 7 consultation for 404 permits.
3. U.S. National Marine Fisheries Service.

### **State Regulatory Permits and/or Agreements:**

1. California Regional Water Quality Control Board (CRWQCB) Section 401 certification;
2. California Department of Fish and Game Lake or Streambed Alteration Agreement;
3. California Coastal Development Permit

### **Local Permits:**

1. Coastal Development Permit in cities with Local Coastal Plans approved by California Coastal Commission.
2. Orange County Natural Community Conservation Planning/Habitat Conservation Plan (NCCP/HCP) compliance consistency.

## **D. DETERMINATION OF MITIGATION RATIOS**

A/E shall establish the appropriate mitigation ratio per the Methods of Assigning Mitigation Ratios for Impacts to Riparian Systems (Dr. Stein). A/E shall prepare habitat mitigation plans, as necessary, for each PROJECT.

## **E. ASSIST IN NEGOTIATIONS WITH REGULATORY AGENCIES**

A/E shall assist in negotiations with the state and federal resource agencies, as necessary. A/E shall prepare exhibits, reports and other materials to convey PROJECT status during these and/or other meetings.

## **F. PREPARATION OF WETLANDS DELINEATIONS**

In conjunction with a biological resources survey, A/E shall prepare wetlands delineation of the waters of the United States and waters of the State of California. The delineation report shall be included as part of the permit application package.

## **G. INDIVIDUAL PROJECT SCHEDULE OF TASKS**

A/E will be assigned PROJECT tasks by COUNTY's Manager of the Projects and Regulatory Permits Unit. Some of the PROJECT tasks to be assigned include the preparation of environmental documentation and preparation/processing of the necessary regulatory permits, waivers or certifications required for the PROJECT's environmental permits. PROJECT tasks also include meetings with STAFF to review the work progress, provide direction, resolve problems and ensure adherence to the work completion schedule. Within five (5) working days of each meeting required by

## ATTACHMENT B

COUNTY/DISTRICT, A/E shall submit a memorandum summarizing the results of the meeting to STAFF for concurrence and provide a PROJECT schedule for completion of the tasks to be performed. The following outline provides typical tasks to be accomplished:

1. STAFF will provide A/E with a description of the PROJECT with mapping of the limits, sketch of the proposed construction or maintenance work, PROJECT cost estimate and location map.
2. A/E will visit the site to determine the PROJECT's environmental parameters, such as the probable extent of CEQA documentation, level of biological survey required and, if necessary, scope of mitigation to be required. A/E will notify STAFF of the day and time of the field visit prior to its occurrence, in the event STAFF chooses to have someone present.
3. A/E shall prepare environmental checklist and, if necessary, initial study, and submit to OC Public Works/LUP/E for review. If a negative declaration (ND) is required, A/E shall prepare the ND and submit to LUP/E for review, approval and public posting.
4. A/E shall prepare and submit to COUNTY and/or DISTRICT all necessary regulatory permit/agreement applications for the PROJECT. The applications shall include, if necessary, a habitat mitigation plan.
5. A/E shall coordinate and be available for meetings with STAFF and the regulatory agencies to respond to comments, discuss terms for mitigation or other PROJECT issues as needed.
6. A/E shall perform biological resources monitoring upon request by STAFF to ensure compliance with state and federal agency permit and/or agreement conditions in consultation with the COUNTY and/or DISTRICT Biological Resources Monitor.

A/E shall perform tasks other than those noted above that may be required to secure the required PROJECT CEQA clearance and regulatory permits.

### **IV. SCHEDULE OF WORK/MEETINGS**

A/E shall submit a schedule for completion of all required work along with a list of deliverables to COUNTY and/or DISTRICT, as applicable, within one week of being notified by COUNTY and/or DISTRICT, as applicable, to begin work. This schedule shall be approved by STAFF. This schedule shall allow sufficient time and shall include meetings with OC Public Works staff to review the work progress, provide technical and policy direction, resolve problems and insure adherence to the work completion schedule. Within five (5) working days of each meeting, A/E shall submit a memorandum summarizing the results of the meeting to STAFF for concurrence.

### **V. A/E COMPENSATION**

#### **A. Environmental Document Preparation Services**

COUNTY and/or DISTRICT, as applicable, will describe the work to be performed and the method of payment, which may be a negotiated lump sum or at an hourly rate (time and materials) with a **not-to-exceed amount of four hundred thousand dollars**

## ATTACHMENT B

**(\$400,000), excluding extra work.** The work to be performed and the payment method must be approved in writing by STAFF prior to start of work. A/E must submit billing with rates for all employees in accordance with Exhibit B, attached hereto. Budgeted amounts may be reallocated between tasks as set forth in additional exhibits to this AGREEMENT based on the actual work required under each task and upon written approval by STAFF.

A/E may be required to submit monthly invoices for services including those provided by others, if any. Total payment to A/E invoiced on a monthly basis shall not exceed the total authorized amount. A/E's monthly invoices shall be subject to STAFF approval in accordance with progress of work and based on the approved PROJECT schedule, if any.

A/E shall include with billings the PROJECT title, agreement number, and work order number, total dollar cost of AGREEMENT, dollar amount of invoice, remaining dollar amount on AGREEMENT. For time and material work, the invoice shall show breakdown of the performed task, time spent on PROJECT by each staff member by name, and hourly rate charged and costs totaled for each staff member. For lump sum work A/E shall show percent completion at the time of the invoice. A/E shall also show on the invoice a complete accounting for Reimbursable Items as described below in Section V.C., "Reimbursable Items of Work".

Payment to A/E shall be within thirty (30) days from the date A/E's invoice is determined by STAFF to be complete and accurate. Ten percent (10%) shall be withheld each month from the cumulative amount due to A/E on each separate item of work. Payment of the remaining ten percent (10%) on each separate item of work shall be made upon acceptance and approval of said item of work by the STAFF.

### **B. Extra Work**

Extra work not described in this AGREEMENT may be required. Extra work shall be subject to the terms and conditions set forth in Paragraph J of the Agreement. In the event extra work is required, the schedule of fees previously submitted by A/E in the proposal will determine the basis of payment for extra work. Schedule of Fees shall be included in the AGREEMENT as Exhibit B.

### **C. Reimbursable Items of Work**

Reimbursable items of work include non-salary expense items which were not included in the scope of work but are necessary for the work. Reimbursable items of work shall be authorized in writing in advance by STAFF. Reimbursable direct costs may include the following:

1. Identifiable postage (large packages or express, overnight, or next day mail charges), other than for general correspondence, required in the performance of the work.
2. Identifiable printing or reproduction services, commercial printing and binding, and similar costs that are not applicable to general overhead required for the performance of the work.

## ATTACHMENT B

3. Third party services directly applicable to the work, such as: specialized engineering services which cannot be accomplished by the A/E or subcontracted under Section A, paragraph 3 of the AGREEMENT; special accounting expenses; special consultants; outside laboratory charges; and, similar costs that are not applicable to general overhead. Compensation for this paragraph shall not exceed twenty percent (20%) of the total AGREEMENT not to exceed amount.

All work conducted by special consultants on behalf of A/E under this paragraph shall be considered as part of the allowable portion of the AGREEMENT that can be accomplished by sub-consultants pursuant to Section A, Paragraphs 3, 4, and 5 of the AGREEMENT.

NOTE: computer expense reimbursement is for third-party services only. A/E's in-house computer time is not considered a Reimbursable Item and should be included as part of A/E fee, listed in Exhibit B.

4. Materials used for in-house testing, laboratory and field supplies.
5. Permit fees, application fees, and filing fees. Permit, filing, and application fees shall not be considered as eligible for the 10% service charge set forth for in paragraph 7 below.
6. Mileage and parking fees for field work and meetings outside Orange and Los Angeles Counties, which shall not exceed a total of five thousand dollars (\$5,000) for the entire term of the agreement, unless otherwise allowed for in advance in writing by the STAFF. Requests for an increase in disbursements under this reimbursable item of work must be approved prior to the start of work and the A/E's incurrence of such costs.
7. Payment to A/E shall be conditioned upon approval by STAFF and A/E providing an invoice with copies of the tickets, receipts, invoices, or other proof of payment by A/E. Payment to A/E for all Reimbursable Items of Work shall be actual invoice cost plus a maximum of a ten percent (10%) service charge approved by STAFF and the total reimbursable expenses paid under this Agreement shall **not exceed eighty thousand dollars (\$80,000.00)**.
8. All costs associated with "Reimbursable Items of Work" shall be considered as included in (not in addition to) the total AGREEMENT not to exceed amount of four hundred thousand dollars (\$400,000), excluding extra work, as specified in Section V.B. and no additional compensation will be allowed therefore.

### D. Items Not Considered Reimbursables Are As Follows

1. Hotel and meal expenses for the A/E's employees being utilized during the course of working on this project.
2. Vehicle rental and equipment use and rentals.
3. CADD, computerized engineering software and subsequent equipment operation related to the production of exhibits, reports, submittals and study documentation shall be considered included in the cost of general overhead and already included in the hourly personnel rates for this project.

## ATTACHMENT B

4. General overhead costs such as accounting, computer rentals, and items generally required for the basic operations of daily business directly related to this project.
5. Standard plans, standard specifications, reference manuals, books, periodicals, or other written materials.
6. Local telephone and FAX.



**EXHIBIT B**  
**To Agreement D13-101**

**The Planning Center|DC&E**  
**Standard Fee Schedule**

STAFF LEVEL	HOURLY BILL RATE
Principal	\$180-\$250
Associate Principal	\$155-\$190
Senior Associate/Senior Scientist	\$130-\$185
Associate/Scientist	\$90-\$150
Project Planner/Project Scientist	\$80-\$120
Planner/Assistant Scientist	\$60-\$100
Graphics Specialist	\$65-\$90
Clerical/Word Processing	\$40-\$105
Intern	\$60-\$85

Other direct costs and subconsultants are billed at cost plus 10%.

Mileage reimbursement rate is the standard IRS-approved rate.

ATTACHMENT B

County of Orange Child Support Enforcement

Contract Certification - EXHIBIT C

**INSTRUCTIONS:**

UPON NOTIFICATION OF SELECTION FOR CONTRACT AWARD/REQUEST FOR RENEWAL, **COMPLETE PART I AND PART II.**  
RETURN COMPLETED FORM TO: XXXXXXXX. Attn XXXXXXXX

**PART I**

**A. In case of an individual contractor, provide:**

His/her name, date of birth, Social Security number, and residence address:

**B. In the case of contractor doing business in a form other than as an individual, provide:**

The name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity; OR

**C. \*If your firm is a non-profit entity please indicate:** "N/A, Non-Profit Organization" **OR** If no single person owns an interest of 10 percent or more please state this fact below.

(Please note: Part II "Certification" must also be signed and returned)

**1. Name:**

D.O.B.

SSN No:

Residence Address:

**2. Name:**

D.O.B.

SSN No:

Residence Address:

**PART II**

**CERTIFICATION (PART I MUST ALSO BE COMPLETED)**

I certify that \_\_\_\_\_ is in full compliance with all applicable Federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract Number: \_\_\_\_\_ with the County of Orange.

I understand that failure to comply shall constitute a material breach of the contract and the failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

## ATTACHMENT B

### EXHIBIT D

#### EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS

Effective January 1, 2001 the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into an AGREEMENT for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes an AGREEMENT for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent CONTRACTORS. An independent CONTRACTOR is defined as "as an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes an AGREEMENT for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [www.edd.ca.gov/txicr.htm](http://www.edd.ca.gov/txicr.htm).

To comply with the reporting requirements of, County procedures for contracting with independent CONTRACTORS mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

First Name, Middle Initial, and Last Name  
Social Security Number  
Address  
Start and expiration dates of contract  
Amount of contract

#### PART I

First Name	Middle Initial	Last Name
SSN# _____		Date of Birth _____
Address _____		
Contract No. _____		
Start Date _____	Expiration Date _____	
Dollar value of contract _____		

#### PART II

##### CERTIFICATION (PART I must also be completed)

I certify that \_\_\_\_\_ is in full compliance with all applicable Federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract Number: \_\_\_\_\_ with the County of Orange.

I understand that failure to comply shall constitute a material breach of the contract and the failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

AUTHORIZED SIGNATURE \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

TITLE \_\_\_\_\_