

**C O N T R A C T**

**THIS CONTRACT**, hereinafter referred to as “CONTRACT” for purposes of identification hereby numbered MA-080-16011288, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

**BY AND BETWEEN**

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

**AND**

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

**AND**

CDM Smith Inc., a Massachusetts 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 CONTRACT MA-080-16011288 - Scope of Work for On-Call Watershed Planning and Engineering, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference; and

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

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

**1. GENERAL****1.1 Retainer**

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

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

1.1.3 A/E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and, it is agreed that only the following firms or independent consultants/contractors are to be employed to provide these PROJECTS/SERVICES, and that the aggregate money value of their

PROJECTS/SERVICES shall not constitute more than forty-nine percent (49%) of the total amount of PROJECTS/SERVICES required under this CONTRACT:

- a. ICF Jones & Stokes, Inc. (*CEQA/NEPA; Regulatory Permitting; GIS; Wetlands and Riparian Design/Biological Assessments/Vegetative Surveys*)
- b. Towill, Inc. (*Topographical Surveying*)

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

1.1.5 A/E's employment of independent consultants/contractors shall not relieve A/E from the performance of its own responsibilities pursuant to this CONTRACT. However, all consultants/contractors independently contracting with COUNTY 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.

## 1.2. Projects/Services

### 1.2.1 Description of PROJECTS/SERVICES

- a. PROJECT/SERVICES to be performed by A/E shall consist of the work as specified herein and as required in Attachment A. If in the event Attachment A shall be in conflict with any provision of this CONTRACT, the wording as set forth in Attachment A shall prevail.
- b. A/E shall be responsible for submitting all PROJECTS/SERVICES to COUNTY 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 1.1.2 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.

### 1.2.2 Design Criteria and Standards

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

### 1.2.3 Scheduling

- a. Concurrently with the work of the CONTRACT, A/E shall prepare a progress work schedule and within seven (7) 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 ten (10) working days for COUNTY 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 Attachment A.
  - c. A/E shall meet “on an “as-needed” basis as determined by DIRECTOR or at least once every two (2) weeks 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 seven (7) days 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 Attachment A, except A/E shall not be responsible for any delay beyond the control of A/E.
  - f. In the event A/E fails to complete the work and obtain the approval of DIRECTOR in the time allowed, COUNTY 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 CONTRACT shall be extended for delay caused by COUNTY and/or DISTRICT, as applicable, in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY and/or DISTRICT, as applicable, review and/or approval time periods.

### **1.3 Assistance by COUNTY and/or DISTRICT STAFF**

- 1.3.1 COUNTY and/or DISTRICT, as applicable, shall assign an appropriate staff member to work with A/E in connection with the work of this CONTRACT. Said staff member's duties will consist of the giving of advice and consultations, assisting A/E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A/E or COUNTY and/or DISTRICT's staff, as applicable, warrant attention, and all other duties as may be described in Attachment A.
- 1.3.2 All of the above activities, however, shall be the primary responsibility of A/E to schedule, initiate and carry through to completion.

### **1.4 Term and Maximum Compensation**

- 1.4.1 The term of this CONTRACT commences upon approval by the COUNTY Board of Supervisors through March 11, 2018, with a maximum allowable compensation of six hundred thousand dollars (\$600,000), except as permitted in Section 1.5 below.

## 1.5 A/E Compensation and Extra Work

- 1.5.1 For the PROJECTS/SERVICES authorized under this CONTRACT, A/E shall be compensated in accordance with the following:
- 1.5.2 For completion and approval of all PROJECTS/SERVICES where “Extra Work” (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as “Attachment B”, attached hereto and incorporated herein by reference.
- 1.5.3 Where extra work is authorized for PROJECTS/SERVICES:
- a. The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond \$100,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$100,000, whichever is less.
  - b. A/E's billing for the Extra Work shall include but not be limited to names of A/E's staff employed in the Extra Work, classification of employees and number of hours worked.
- 1.5.4 For partial completion of work of PROJECTS/SERVICES followed by default on part of A/E:
- a. For failure to complete and secure approval of the first required submittal, there shall be no compensation.
  - b. For failure to complete and secure approval of other authorized phases, A/E shall, upon completion of PROJECTS/SERVICES by others, be entitled to receive compensation based on approved work of PROJECTS/SERVICES not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by COUNTY 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 breach of the CONTRACT.

## 2. LABOR

### 2.1 Non-Employment of COUNTY and/or DISTRICT Personnel

- 2.1.1 A/E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of COUNTY and/or DISTRICT, as applicable, in professional classifications of the same skills required for the performance of this CONTRACT who is involved in this

Project in a participatory status during the life of this CONTRACT regardless of the assignments said employee may be given or the days or hours employee may work.

- 2.1.2 Nothing in this CONTRACT shall be deemed to make A/E, or any of A/E's employees or agents, agents or employees of the COUNTY and/or DISTRICT, as applicable. A/E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A/E is in compliance with the terms of this CONTRACT. Anything in the CONTRACT which may appear to give COUNTY and/or DISTRICT, as applicable, 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, as applicable, only in the results of the work.

## **2.2 Non-Discrimination**

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

## **2.3 Employee Eligibility Verification**

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

## **2.4 Independent Contractor**

- 2.4.1 As referenced in Section 2.1.2 of this CONTRACT, A/E shall be considered an independent contractor.
- 2.4.2 Neither A/E, its employees, nor anyone working under A/E shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY and/or DISTRICT, as applicable.

## **2.5 Conflict of Interest Contractor Personnel**

- 2.5.1 The A/E shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY 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.

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

## **2.6 Labor Code Notice**

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

## **3. INSURANCE**

- 3.1.1 Prior to the provision of services under this CONTRACT, the A/E agrees to purchase all required insurance at A/E's expense, including all endorsements required herein, necessary to satisfy the COUNTY and/or DISTRICT, as applicable, that the insurance provisions of this CONTRACT have been complied with. A/E agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the COUNTY and/or DISTRICT, as applicable, during the entire term of this CONTRACT. The COUNTY and/or DISTRICT, as applicable, reserves the right to request the declarations page showing all endorsements and a certified copy of the policy. In addition, all subcontractors performing work on behalf of A/E pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for A/E.
- 3.1.2 A/E shall ensure that all subcontractors performing work on behalf of A/E pursuant to this CONTRACT shall be covered under A/E's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for A/E. A/E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY and/or DISTRICT, as applicable, from A/E under this CONTRACT. It is the obligation of A/E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A/E through the entirety of this CONTRACT for inspection by COUNTY and/or DISTRICT, as applicable, representative(s) at any reasonable time.
- 3.1.3 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 upon review of A/E's current audited financial report. A/E shall be responsible for reimbursement of any deductible to the insurer.

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

A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier). If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.
2. The policy or policies of insurance maintained by the A/E shall provide the minimum limits and coverage as set forth below:

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

B. Required Coverage Forms

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

C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. An Additional Insured endorsement using ISO form CG 2010 or CG

- 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.
- b. A primary non-contributing endorsement evidencing that A/E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents.
  3. All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment
  4. A/E shall notify COUNTY and/or DISTRICT, as applicable, in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY and/or DISTRICT, as applicable. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY and/or DISTRICT, as applicable, may suspend or terminate this CONTRACT.
  5. If A/E's Professional Liability policy is a "claims made" policy, A/E shall agree to maintain professional liability coverage for two (2) years following completion of CONTRACT.
  6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
  7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
  8. If the A/E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
  9. COUNTY 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 CONTRACT. 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 COUNTY and/or DISTRICT, as applicable, incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to A/E, and COUNTY and/or DISTRICT, as applicable, shall be entitled to all legal remedies.

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

#### D. Certificate Holder Information

The County of Orange has contracted with Ebix RCS to monitor insurance certificated and endorsements for compliance with the above requirements. Upon initial award of a Contract, the certificate(s) and endorsement(s) should be forwarded to the agency/department address listed on the solicitation. The County will forward these documents to Ebix RCS on your behalf. Ebix RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the County to continue your Contract through the expiration date.

- 3.2.1 If A/E subcontracts portions of the architectural or engineering design PROJECTS/SERVICES to be performed under the terms of this CONTRACT, A/E shall obtain evidence that such subcontractors have purchased Professional Liability Insurance to the same limits as described in Paragraph 3 (unless modified by Attachment A) and containing the same clauses as the insurance required of A/E under the terms of this CONTRACT. Evidence of subcontractor's insurance shall be submitted to COUNTY and/or DISTRICT, as applicable, upon request.

#### 4. INDEMNITY/COMPLIANCE

- 4.1 **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 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 CONTRACT.**
- 4.2 All PROJECTS/SERVICES submitted by A/E shall be complete and shall be carefully checked prior to submission. A/E understands that COUNTY 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 and/or DISTRICT's, as applicable, approval thereof, COUNTY and/or DISTRICT's, as applicable, approval of

A/E's PROJECTS/SERVICES shall not be used as a defense by A/E.

#### 4.3 Indemnification

- 4.3.1 A/E agrees to, indemnify, defend with counsel approved in writing by COUNTY and/or DISTRICT, as applicable, and hold COUNTY and/or DISTRICT, as applicable, their elected and appointed officials, officers, employees, agents and those special districts and agencies which the 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 CONTRACT.

#### 4.4 Bills and Liens

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

#### 4.5 Compliance with Laws

- 4.5.1 A/E represents and agrees that services to be provided under this CONTRACT shall fully comply, at A/E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY 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.
- 4.5.2 A/E acknowledges that COUNTY and/or DISTRICT, as applicable, 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 INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

### 5. TERMINATION

#### 5.1 Termination of Contract for Cause

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

## **5.2 Termination for Convenience**

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

## **5.3 Breach of Contract**

- 5.3.1 The failure of the A/E to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT, the COUNTY and/or DISTRICT, as applicable, may:
  - a. afford the A/E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
  - b. discontinue payment to the A/E for and during the period in which the A/E is in breach; and
  - c. offset those monies disallowed pursuant to the above, against any monies billed by the A/E but yet unpaid by the COUNTY and/or DISTRICT, as applicable.

## 5.4 Default

- 5.4.1 In the event any equipment or service furnished by the A/E in the performance of this CONTRACT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY and/or DISTRICT's, as applicable, acceptance of the equipment or service, or any performance period specifically specified within the specifications or CONTRACT, 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 CONTRACT and the actual cost to the COUNTY and/or DISTRICT, as applicable.
- 5.4.2 In the event the A/E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY 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 CONTRACT.
- 5.4.3 In the event of the cancellation of this CONTRACT, either in whole or in part, by reason of the default or breach by the A/E, any loss or damage sustained by the COUNTY and/or DISTRICT, as applicable, in procuring any equipment or service which the A/E agreed to supply under this CONTRACT shall be borne and paid for by the A/E.
- 5.4.4 Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this CONTRACT.
- 5.4.5 Upon termination of the CONTRACT with A/E, the COUNTY 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 CONTRACT.
- 5.4.6 The right of either party to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

## 6. MISCELLANEOUS

### 6.1 Laws to be Observed

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

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

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

**6.3 Amendments**

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

**6.4 Successors and Assigns**

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

**6.5 Entirety**

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

**6.6 Severability**

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

**6.7 Binding Obligation**

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

**6.8 Governing Law and Venue**

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

Code of Civil Procedure, Section 394.

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

## **6.9 Child Support Enforcement Requirements**

- 6.9.1 To comply with child support enforcement requirements of the COUNTY 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 "Exhibit 1," attached hereto and incorporated herein by reference.
- 6.9.2 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.

## **6.10 Ownership of Documents**

- 6.10.1 All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A/E and/or anyone acting under the supervision of A/E pursuant to this CONTRACT, shall become the property of COUNTY 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.
- 6.10.2 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 CONTRACT to any third party. If A/E and/or anyone acting under the supervision of A/E should later desire to use any of the data prepared in connection with this CONTRACT, A/E shall first obtain the written approval of COUNTY and/or DISTRICT, as applicable.

## **6.11 Confidentiality**

- 6.11.1 All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A/E in connection with the performance of this CONTRACT shall be held confidential by A/E and/or anyone acting under the supervision of A/E and shall not, without the prior written consent of COUNTY and/or DISTRICT, as applicable, be used for any purposes other than the performance of the PROJECTS/SERVICES described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the PROJECTS/SERVICES.
- 6.11.2 Nothing furnished to A/E which is generally known among counties in Southern California

shall be deemed confidential.

6.11.2 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.

## **6.12 Publication**

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

6.12.2 The A/E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this CONTRACT or any subsequent amendment of, or effort under this CONTRACT. A/E must first obtain review and approval of said media contact from the COUNTY and/or DISTRICT, as applicable, through the COUNTY and/or DISTRICT's Project Manager, as applicable. 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.

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

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

6.13.2 Within ten (10) days of COUNTY 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 CONTRACT.

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

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

**6.14 Notices**

- 6.14.1 Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the PROJECTS/SERVICES.
- 6.14.2 Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.
- 6.14.3 All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For A/E:

CDM Smith Inc.  
600 Wilshire Blvd, #750  
Los Angeles, CA 90017  
Attn: Lanaya Voelz  
Phone: 760-438-7755  
Cell: 760-310-1171  
E-mail: [voelzld@cdmsmith.com](mailto:voelzld@cdmsmith.com)

For COUNTY and/or DISTRICT:

OC Public Works/OC Watersheds  
2301 N. Glassell St.  
Orange, CA 92865  
Attn: Christy Suppes, Project Manager  
Phone: 714-955-0673  
E-mail: [christy.suppes@ocpw.ocgov.com](mailto:christy.suppes@ocpw.ocgov.com)

cc: OC Public Works Procurement Services  
300 N. Flower St., Suite 838  
Santa Ana, CA 92703  
Attn: Angela Shim  
Phone: 714-667-9643  
E-mail: [angela.shim@ocpw.ocgov.com](mailto:angela.shim@ocpw.ocgov.com)

**6.15 Attorney's Fees**

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

**6.16 Interpretation**



- 6.16.1 CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT.
- 6.16.2 In addition, each PARTY has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.
- 6.16.3 Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other PARTY hereto or by any person representing them, or both.
- 6.16.4 Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the PARTY that has drafted it is not applicable and is waived.
- 6.16.5 The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this CONTRACT.

**6.17 Headings**

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

**6.18 Acceptance**

- 6.18.1 Unless otherwise agreed to in writing by COUNTY 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.

**6.19 Changes**

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

**6.20 Assignment**

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

**6.21 Changes in Ownership**

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

## **6.22 Force Majeure**

6.22.1 A/E shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided A/E gives written notice of the cause of the delay to COUNTY 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.

## **6.23 Calendar Days**

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

## **6.24 Title to Data**

6.24.1 All materials, documents, data or information obtained from the COUNTY 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 this CONTRACT, 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 CONTRACT without the express written consent of the COUNTY and/or DISTRICT, as applicable.

6.24.2 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 CONTRACT unless otherwise specified by the DIRECTOR.

## **6.25 Availability of Funds**

6.25.1 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.

## **6.26 Contingency of Funding**

6.26.1 A/E acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of

California or other funding sources to COUNTY and/or DISTRICT, as applicable. If such funding and/or appropriations are not forthcoming, or otherwise limited, COUNTY and/or DISTRICT, as applicable, may immediately terminate or modify this CONTRACT without penalty.

**6.27 Contract Construction**

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

**6.28 Usage**

6.28.1 No guarantee is given by the COUNTY and/or DISTRICT, as applicable, to A/E regarding usage of this CONTRACT. The A/E agrees to supply services requested, as needed by the County of Orange, at prices listed in the CONTRACT, regardless of quantity requested.

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

Date: 2/24/2016

CDM Smith Inc.,  
a Massachusetts Corporation  
By \_\_\_\_\_  \_\_\_\_\_  
Signature

Jason P. Makofsky Assistant Clerk  
Print Name & Title

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

Date: 2/25/2016

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

Hampik Dekermenjian Sr. vice President  
Print Name & Title

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

COUNTY OF ORANGE,  
a political subdivision of the State of California  
Date: \_\_\_\_\_ By \_\_\_\_\_  
Chairman of the Board of Supervisors  
County of Orange, California

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

Date: \_\_\_\_\_ By \_\_\_\_\_  
Chairman of the Board of Supervisors  
County of Orange, California

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: \_\_\_\_\_ By \_\_\_\_\_  
Robin Stieler  
Clerk of the Board  
County of Orange, California

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

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

**ATTACHMENT A  
SCOPE OF WORK****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 in relation to Watershed Planning and Engineering Projects. A/E will provide on-call support services as listed below, on an as-needed basis.

**II. SCOPE OF WORK – WATERSHED PLANNING & ENGINEERING**

Support is periodically needed for watershed planning activities and the development and construction of water quality improvement projects.

A/E shall provide the following services upon written request by the COUNTY Project Manager:

A. Preparation of watershed management plans including updates of Integrated Regional Water Management Plans and Watershed Infiltration and Hydromodification Management Plans including:

1. Performance of sedimentation, hydrologic and hydraulic analyses, biological assessments, and topographic and vegetative surveys;
2. Preparation of stream/channel restoration/retrofitting plans;
3. Preparation of GIS layers, map products, and other graphics and GIS support;
4. Preparation of CEQA/NEPA documentation;
5. Preparation and processing of regulatory permits;
6. Assessment of permit and regulatory requirements;
7. Assistance with public and community outreach, community meetings and stakeholder coordination;
8. Provision of meeting facilitation and support;
9. Preparation of grant requests; and
10. Other related tasks as determined by COUNTY Project Manager.

B. Design services involving the preparation of construction documents for: urban runoff diversion facilities; post-construction structural urban runoff treatment Best Management Practices (both public domain and mechanized package treatment plant BMPs); wetland and riparian habitat restoration projects; low impact development (LID) and hydromodification site design BMPs; and, other water quality improvement projects, including:

1. Preparation of engineers estimates;
2. Design support services during pre-design, project bid advertisement, and construction;
3. Preparation of CEQA/NEPA documentation;
4. Preparation of grant requests to fund projects;
5. Preparation of applications for resource agency permits necessary for construction; and
6. Other related tasks as determined by COUNTY Project Manager.

**III. PERFORMANCE OF WORK**

Work shall be performed on a task basis. When services are requested by the COUNTY, a specific task order and budget will be developed by the COUNTY and A/E, per the rate schedule in Attachment A, for each task. Such specific scope of work, including the task specific budget, will be agreed upon prior to the initiation of the work by both the COUNTY and A/E.

**ATTACHMENT B**  
**A/E'S PRICING (FEE SCHEDULE)**

- I. COMPENSATION:** This is an all-inclusive usage CONTRACT between COUNTY and/or DISTRICT, as applicable, and A/E for On-Call Watershed Planning and Engineering, as set forth in Attachment A, "Scope of Work".

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

- II. PRICING:** Payment shall be made in accordance with the provisions of this CONTRACT. Partial progress payments may be allowed at the discretion of the COUNTY and/or DISTRICT, as applicable, Project Manager. Payment shall be as follows:

**A. Classification Rates:**

<b>CDM SMITH INC.</b>	
<b><u>Classification Titles</u></b>	<b><u>Hourly Rate</u></b>
<b><i>Engineers/Scientists/Planners:</i></b>	
Grade 1	\$123.00
Grade 2	\$140.00
Grade 3	\$155.00
Grade 4	\$165.00
Grade 5	\$175.00
Grade 6	\$190.00
Grade 7	\$205.00
Principal	\$220.00
Associate	\$250.00
Vice President	\$265.00
Sr. Vice President	\$285.00
<b><i>Support Service:</i></b>	
Designer Drafter 1	\$95.00
Designer Drafter 1	\$105.00
Designer Drafter 1	\$115.00
Designer Drafter 1	\$125.00
Designer Drafter 1	\$135.00
Designer Drafter 1	\$145.00
Designer Drafter 1	\$155.00

<u>Classification Titles</u>	<u>Hourly Rate</u>
Designer Drafter 1	\$165.00
Administrative Manager	\$115.00
Administrative Assistant/Word Processor	\$110.00
Office Clerk	\$90.00
Financial Manager	\$135.00
Contract Administrator	\$120.00
Finance Assistant	\$95.00

**B. Total CONTRACT Amount Shall Not Exceed: \$600,000**

**III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this CONTRACT. All price decreases will automatically be extended to COUNTY and/or DISTRICT, as applicable.

**IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A/E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A/E agrees that no price increases shall be passed along to COUNTY and/or DISTRICT, as applicable, during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.

**V. A/E'S EXPENSE:** A/E will be responsible for all costs related to photo copying, telephone communications and fax communications while on COUNTY/DISTRICT sites during the performance of work and services under this CONTRACT.

**VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the COUNTY and/or DISTRICT, as applicable, Project Manager. A/E may be entitled to reimbursement for the following, upon prior approval by COUNTY and/or DISTRICT, as applicable:

- 1) The actual costs of special equipment to be rented, leased or purchased by A/E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the COUNTY and/or DISTRICT, as applicable, Project Manager.
- 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the COUNTY and/or DISTRICT, as applicable, Project Manager.
- 3) Other actual costs and/or payments specifically approved and authorized in writing by the COUNTY and/or DISTRICT, as applicable, Project Manager and actually incurred by A/E in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by COUNTY and/or DISTRICT, as applicable, Project Manager and are subject to the following restrictions:
  - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this CONTRACT shall be



based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A/E's "Home Based" office location and OC Public Works location, as well as mileage within OC Public Works property will not be reimbursed.

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

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

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

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

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

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

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

Invoices and support documentation are to be forwarded to:

OC Public Works  
Procurement Services  
Attn: Accounts Payable  
300 N. Flower St., 8th Floor  
Santa Ana, CA 92703

A/E has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the COUNTY and/or DISTRICT, as applicable, via an EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C  
STAFFING PLAN1. A/E KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Licenses/ Certifications (include license number)
Lanaya Voelz, PE	Principal/CSM	16	PE: CA, 2006; C69883
Joe LeClaire, Ph.D.	Associate/Project Manager	31	N/A
Tom Quasebarth	Vice President/Watershed Planning Task Lead	32	N/A
Stefan Schuster, PE	Senior Water Resources Engineer / Design Services Task Lead	20	PE: CA, 2003, C64778 CPESC, CPSWQ
Dan Rodrigo	Sr. Vice President / Facilitation/Outreach	25	N/A
Brian Murphy, PE	Principal / Design Support Services	15	PE: CA, 2007, C71289, PH, 08-H-1829, CFM, US-07-02969, D. WRE, ENV SP
Ted Johnson	Associate / Design Support Services	29	PE: CO, 1989, PE.0026086, CFM
Don Schroeder, PE	Consultant / Technical Review	39	PE: CA, 1976; 27287
Jennifer Jones	Sr. Ecologist/Environmental Scientist	18	Certified Ecologist
Moosub Eom, Ph.D., PE	Water Resources Engineer / Hydrology/Hydraulic/Sediment Analysis and Modeling	15	PE: CA, C80918

A/E understands that the personnel represented as assigned to the CONTRACT must remain working on the CONTRACT throughout the duration of the CONTRACT unless otherwise requested or approved by the COUNTY and/or DISTRICT, as applicable. Substitution or addition of A/E's key personnel in any given category or classification shall be allowed only with prior written approval of the COUNTY and/or DISTRICT, as applicable, Project Manager. ***Note: The written approval of substituted A/E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.***

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

applicable, is not required to provide any reason for the request for removal of any A/E personnel.

**2. SUBCONTRACTOR(S) (IF APPLICABLE)**

Listed below are subcontractor(s) anticipated by A/E to perform services specified in Attachment A. Substitution or addition of A/E's subcontractors in any given project function shall be allowed only with prior written approval of the COUNTY and/or DISTRICT'S Project Manager, as applicable.

Company Name & Address	Contact Name and Telephone Number	Project Function
ICF Jones & Stokes, Inc 1 Ada Parkway Suite 100 Irvine, CA 92618 US	Jeff Thomas Phone: 1.949.333.6600 Fax: 1.949.333.6601	CEQA/NEPA; Regulatory Permitting; GIS; Wetlands and Riparian Design/Biological Assessments/Vegetative Surveys
Towill Inc. 2091 Business Center Drive, Suite 150 Irvine, CA 92612	Bruce Hunsaker, PLS Phone: 1.949.261.1900	Topographical Surveying