

AGREEMENT FOR ARCHITECT-ENGINEER/PROFESSIONAL ASSISTANCE FOR THE NITROGEN AND SELENIUM MANAGEMENT PROGRAM FOR THE NEWPORT BAY WATERSHED

THIS AGREEMENT, for purposes of identification hereby numbered D05-068, is made and entered into this \_\_\_\_ day of August, 2005, by and between the County of Orange, hereinafter referred to as "COUNTY", and RBF Consulting, hereinafter referred to as "A-E/PROFESSIONAL". County and A-E/PROFESSIONAL, hereinafter are sometimes referred to individually as "PARTY" or collectively as "PARTIES".

W I T N E S S E T H

WHEREAS, COUNTY requires professional assistance to accomplish work as described in Exhibit A attached hereto and by this reference made a part hereof, hereinafter called the "SERVICES"; and

WHEREAS, A-E/PROFESSIONAL is qualified and willing to perform such SERVICES.

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

1. RETAINER

COUNTY does hereby retain A-E/PROFESSIONAL to perform the SERVICES upon the terms and conditions hereinafter specified. A-E/PROFESSIONAL's project manager ("PROJECT MANAGER") who shall be assigned to manage completion of the SERVICES and who is accepted by COUNTY is Tom Bonigut.

A-E/PROFESSIONAL may employ special A-E/PROFESSIONALS (hereinafter referred to as "SPECIAL A-E/PROFESSIONAL") in the accomplishment of the SERVICES; and, it is agreed that the following SPECIAL A-E/PROFESSIONALS are to be employed:

- 1) Larry Walker Associates
- 2) CH2M Hill

PROJECT MANAGER and SPECIAL A-E/PROFESSIONALS may be not be substituted except with the written approval of the Director, Resources and Development Management Department, or his designee (hereinafter referred to as "DIRECTOR").

A-E/PROFESSIONAL may employ other SPECIAL A-E/PROFESSIONALS upon the express written approval of the DIRECTOR. The DIRECTOR shall have the right to require the

1 removal and replacement of the A-E/PROFESSIONAL's PROJECT MANAGER and key personnel  
2 (as identified in Exhibit C, A-E Professional Key Staff and Fee Schedule). The  
3 DIRECTOR shall notify the CONTRACTOR in writing of such action. The  
4 A-E/PROFESSIONAL shall accomplish the removal within 14 calendar days after written  
5 notice by the DIRECTOR. The DIRECTOR shall review and approve the appointment of  
6 the replacement for the A-E/PROFESSIONAL'S PROJECT MANAGER and key personnel. Said  
7 approval shall not be unreasonably withheld.

8 A-E/PROFESSIONAL's employment of SPECIAL A-E/PROFESSIONALS shall not relieve A-  
9 E/PROFESSIONAL from its responsibility to complete the SERVICES pursuant to this  
10 AGREEMENT.

11 2. ADMINISTRATION OF AGREEMENT

12 The DIRECTOR shall administer this AGREEMENT for COUNTY.

13 3. TERM

14 The term of this AGREEMENT shall be from the date of AGREEMENT approval through  
15 June 30, 2006, renewable for four additional twelve (12) month periods upon mutual  
16 agreement of the PARTIES hereto as memorialized in writing thirty (30) days prior  
17 to its expiration. DIRECTOR may extend the term, based on satisfactory  
18 performance, provided such extension(s) does (do) not result in the total term of  
19 the AGREEMENT exceeding 60 months, provided that the total compensation does not  
20 exceed ~~\$2,000,000~~ \$2,875,000 and provided that all other terms and conditions  
21 remain unchanged.

22 4. DESCRIPTION OF SERVICES

23 The SERVICES to be performed by A-E/PROFESSIONAL shall consist of the work  
24 specified in Exhibit A (Scope of Work). Upon each renewal of the AGREEMENT  
25 (according to the terms of Section 3), a new Scope of Work must be developed and  
26 approved by the PARTIES for each twelve (12) month period. A-E PROFESSIONAL shall  
be responsible for submitting all written reports and other work products during  
the course of performing services to COUNTY in a form which has been thoroughly

1 reviewed and checked for completeness, accuracy and consistency by the PROJECT  
2 MANAGER. Any work product not fulfilling this requirement will be returned to A-  
3 E/PROFESSIONAL for correction prior to acceptance by COUNTY.

4 5. A-E/PROFESSIONAL RELATIONSHIP

5 A-E/PROFESSIONAL is and at all times shall be deemed to be an independent  
6 contractor, wholly responsible for the SERVICES performed under terms of this  
7 AGREEMENT. COUNTY shall look only to A-E/PROFESSIONAL for results. Nothing  
8 contained herein shall be construed as creating any relationship of  
9 employer/employee, principal/agent, master/servant, partners, joint venture or  
10 association. A-E/PROFESSIONAL shall assume full responsibility for the actions of  
11 its employees and SPECIAL A-E/PROFESSIONALS as related to the SERVICES provided  
12 under this AGREEMENT.

13 6. MEETINGS

14 The DIRECTOR and PROJECT MANAGER (or assigned Deputy Project Manager) will attend  
15 meetings on reasonable notice to discuss contractual matters or poor performance  
16 and progress under this AGREEMENT. The PROJECT MANAGER and/or other appropriate  
17 personnel shall attend meetings identified in Exhibit A.

18 7. SERVICES TO BE PROVIDED BY COUNTY

19 The DIRECTOR shall assign an appropriate staff representative to direct and  
20 approve A-E/PROFESSIONAL's work. Said staff representative shall approve work  
21 assignments, provide direction to A-E/PROFESSIONAL, review A-E/PROFESSIONAL's  
22 work, approve A-E/PROFESSIONAL's invoices for payment, assist A-E/PROFESSIONAL in  
23 dealings with other public agencies and private PARTIES and other activities which  
24 in the judgment of A-E/PROFESSIONAL or DIRECTOR warrant attention.

25 8. TERMINATION OF AGREEMENT

26 Notwithstanding any other provision of the AGREEMENT, the County may, at any time,  
and without cause, terminate this AGREEMENT in whole or in part, upon not less  
than seven days written notice to the A-E/PROFESSIONAL. Such termination shall be

1 effected by delivery to the A-E/PROFESSIONAL of a notice of termination specifying  
2 the effective date of the termination and the extent of the work to be terminated.  
3 The A-E/PROFESSIONAL shall immediately stop work in accordance with the notice and  
4 comply with any other direction as may be specified in the notice or as provided  
5 subsequently by the County. A-E/PROFESSIONAL shall within a reasonable period of  
6 time not to exceed ten (10) days, deliver to COUNTY all work performed by A-  
7 E/PROFESSIONAL and/or any SPECIAL A-E/PROFESSIONAL pursuant to this AGREEMENT,  
8 which work has been reduced to submittals or other work products, prior to payment  
9 of any remaining compensation due as described in Section 9 below.

10 The County shall pay the A-E/PROFESSIONAL for the work completed prior to the  
11 effective date of the termination, and such payment shall be A-E/PROFESSIONAL's  
12 sole remedy under this AGREEMENT. Under no circumstances will the  
13 A-E/PROFESSIONAL be entitled to anticipatory or unearned profits, consequential  
14 damages, or other damages of any sort as a result of a termination or partial  
15 termination under this Section. The A-E/PROFESSIONAL shall insert in all SPECIAL  
16 A-E/PROFESSIONAL contracts that the SPECIAL A-E/PROFESSIONAL shall stop work on  
17 the date of and to the extent specified in a notice of termination, and shall  
18 require SPECIAL A-E/PROFESSIONAL to insert the same condition in any lower tier  
19 subcontracts.

18 9. A-E/PROFESSIONAL COMPENSATION

19 For the SERVICES authorized under this AGREEMENT, A-E/PROFESSIONAL shall be  
20 compensated in accordance with the following:

- 21 1. For completion and approval of all SERVICES, where extra work is not  
22 authorized, total compensation, method of compensation and other  
23 compensation including reimbursables shall be described and payable as  
24 stipulated in Exhibit B and shall not exceed \$871,800 for the first twelve  
25 (12) month AGREEMENT period and \$2,000,000 for the total term of the  
26 AGREEMENT including renewals as specified in Section 3.

1           2.       For partial completion of SERVICES following termination of A-  
2           E/PROFESSIONAL.

3           a.       Prior to the first approved submittal of the SERVICES in Exhibit A,  
4           there shall be no compensation.

5           b.       For partial completion of SERVICES, A-E/PROFESSIONAL shall be  
6           entitled to receive compensation based on approved SERVICES plus the  
7           reasonable value as determined by COUNTY of the non-approved  
8           SERVICES.    In no case, however, shall such compensation paid A-  
9           E/PROFESSIONAL upon termination of A-E/PROFESSIONAL exceed the  
10          agreed maximum compensation for such SERVICES in Exhibit B.

11   10. EXTRA WORK

12           In the event there are new or unforeseen requirements not identified in Exhibit  
13           A, the Scope of Work, the DIRECTOR has the sole discretion to determine what  
14           constitutes extra services and is hereby authorized to issue change orders not to  
15           exceed 10% of the original AGREEMENT amount. A-E/PROFESSIONAL agrees to perform  
16           extra services pursuant to change order authorized in writing by DIRECTOR upon  
17           the terms described in A-E/PROFESSIONAL COMPENSATION above.

18           Although A-E/PROFESSIONAL will make no changes in this AGREEMENT without COUNTY's  
19           written consent, the DIRECTOR may modify requirements at any time without  
20           changing the intent of this AGREEMENT. If COUNTY initiated changes affect price  
21           or delivery, A-E/PROFESSIONAL will give DIRECTOR written notice no later than on  
22           (1) week from the date the change was proposed. Any price or delivery change  
23           shall be agreed to in writing by COUNTY before becoming effective.

24   11. PROJECT SCHEDULE

25           The services performed under this AGREEMENT shall be done in accordance with the  
26           approved project schedule, milestones and completion dates as specified in  
          Exhibit A, Scope of Work, which may be revised at the option of the COUNTY with

1 the A-E/PROFESSIONAL'S concurrence. The A-E/PROFESSIONAL shall be responsible for  
2 schedule adherence as outlined in Exhibit A, Scope of Work.

3 11. OWNERSHIP OF DOCUMENTS

4 All data, including but not limited to reports, files, plans, drawings,  
5 specifications, proposals, sketches, diagrams and calculations, prepared by  
6 A-E/PROFESSIONAL and/or anyone acting under the supervision of A-E/PROFESSIONAL  
7 pursuant to this AGREEMENT, shall become the property of COUNTY upon preparation  
8 by A-E/PROFESSIONAL.

9 COUNTY shall not be limited in any way to its use thereof at any time, including  
10 the release of this data to third parties, provided that any such use not within  
11 the purposes of this AGREEMENT shall be at the sole risk of COUNTY. If  
12 A-E/PROFESSIONAL and/or anyone acting under the supervision of A-E/PROFESSIONAL  
13 should later desire to use any of the work products prepared in connection with  
14 this AGREEMENT, A-E/PROFESSIONAL shall first obtain the written approval of  
15 COUNTY.

16 Ownership does not include elements not owned or created by A-E/PROFESSIONAL for  
17 which A-E/PROFESSIONAL has no authority to transfer ownership and for which usage  
18 rights must be secured or payment required. Such elements may include stock or  
19 original photography, illustration, union or non-union voice or acting talent and  
20 stock or original music. Notwithstanding any other provision of this AGREEMENT,  
21 all of A-E/PROFESSIONAL's pre-existing or proprietary computer programs,  
22 software, information or materials developed by A-E/PROFESSIONAL outside of this  
23 AGREEMENT shall remain the exclusive property of A-E/PROFESSIONAL.

24 12. CONFIDENTIALITY

25 All ideas, memoranda, specifications, plans, procedures, drawings and  
26 descriptions, A-E/PROFESSIONAL work product, and all other written information  
submitted to A-E/PROFESSIONAL in connection with the performance of this  
AGREEMENT shall be held confidential by A-E/PROFESSIONAL and/or anyone acting  
under the supervision of A-E/PROFESSIONAL and shall not, without the prior

1 written consent of COUNTY, be used for any purposes other than the performance of  
2 SERVICES described in Exhibit A, nor be disclosed to any person, partnership,  
3 company, corporation or agency, not connected with the performance of SERVICES.  
4 During the term of this AGREEMENT, A-E/PROFESSIONAL and/or SPECIAL  
5 A-E/PROFESSIONALS shall not use COUNTY name or insignia, photographs of the work,  
6 or any other publicity pertaining to the work in any magazine, trade paper,  
7 newspaper, or other medium, without the express written consent of COUNTY.

8 13. PUBLICATION

9 No copies, sketches or graphs, including graphic art work, are to be released by  
10 A-E/PROFESSIONAL, SPECIAL A-E/ PROFESSIONALS and/or anyone acting on behalf of A-  
11 E/PROFESSIONAL and SPECIAL A-E/ PROFESSIONALS to any person, partnership,  
12 company, corporation, or agency, without prior written approval by COUNTY, except  
13 as necessary for the performance of SERVICES. All press releases, including  
14 graphic displays to be published in newspapers, magazines, etc., are to be  
15 administered only by COUNTY unless otherwise agreed to by both PARTIES.

16 14. ERRORS AND OMISSIONS

17 All reports submitted by A-E/PROFESSIONAL shall be complete and shall be  
18 carefully checked by PROJECT MANAGER, prior to submission to COUNTY. A-  
19 E/PROFESSIONAL agrees that COUNTY review is discretionary and A-E/PROFESSIONAL  
20 shall not assume that COUNTY will discover errors and/or omissions. If COUNTY  
21 discovers any errors or omissions in reports, the reports will be returned to A-  
22 E/PROFESSIONAL for correction prior to COUNTY approving A-E/PROFESSIONAL's  
23 report.

24 Should COUNTY or others discover, after COUNTY approval, error or omissions in  
25 reports submitted by A-E/PROFESSIONAL, said approval of reports shall not be used  
26 as a defense. The determination of what constitutes any error or correction  
shall be at the sole discretion of DIRECTOR but such determination shall not be  
arbitrary.

15. RECORDS AND AUDIT/INSPECTIONS

A-E/PROFESSIONAL shall keep an accurate record of time expended by A-E/PROFESSIONAL and/or SPECIAL A-E/PROFESSIONAL employed by A-E/PROFESSIONAL in the performance of this AGREEMENT. Within ten (10) days of COUNTY's written request, A-E/PROFESSIONAL shall allow COUNTY 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.

A-E/PROFESSIONAL shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of one (1) year after termination or completion of the AGREEMENT or until resolution of any claim or dispute between the PARTIES, whichever is later.

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

16. CONFLICT OF INTEREST

A-E/PROFESSIONAL agrees that no former or current COUNTY employee shall participate in the SERVICES provided by A-E/PROFESSIONAL to COUNTY, or become a partner, shareholder or otherwise share in the profits of A-E/PROFESSIONAL for a period of one year from the date such person ceased COUNTY employment.

17. COVENANT AGAINST CONTINGENT FEES OR FINANCIAL INTERESTS

A. A-E/PROFESSIONAL warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

B. A-E/PROFESSIONAL represents and warrants that no COUNTY employee, elected or appointed official whose position in COUNTY enables him/her to influence either the award or administration of this AGREEMENT or any competing agreement, and no spouse or economic dependent of such person, is or shall be employed in any capacity by A-E/PROFESSIONAL, has been or will be given a commission, percentage,



1 brokerage or contingent fee, has been or will be given an understanding or  
2 agreement for a commission, percentage, brokerage or contingent fee, or has or  
3 shall have any direct or indirect financial interest in this AGREEMENT.

4 C. For breach or violation of this provision, COUNTY shall have the right to  
5 terminate this AGREEMENT, and in its sole discretion, to deduct from the  
6 AGREEMENT price or consideration, or otherwise recover, the full amount of any  
7 such commission, percentage, or contingent fee.

8 18. NON-EMPLOYMENT OF COUNTY OF ORANGE PERSONNEL

9 A-E/PROFESSIONAL agrees that no full-time, regular employee of the COUNTY who is  
10 involved in these SERVICES shall be given or offered employment by  
11 A-E/PROFESSIONAL during the life of this AGREEMENT, regardless of the assignments  
12 said employee may be given or the days or hours employee may work.

13 By accepting this AGREEMENT, A-E/PROFESSIONAL also agrees, for the duration of  
14 this AGREEMENT, not to offer employment to any COUNTY full-time, regular employee  
15 for the performance of this AGREEMENT.

16 19. NONDISCRIMINATION

17 A-E/PROFESSIONAL shall not engage in discrimination in the employment of persons  
18 because of race, religious creed, color, national origin, ancestry, age, physical  
19 handicap, mental disability, medical condition, marital status or sex. Violation  
20 of this provision may result in the imposition of penalties referred to in Labor  
21 Code Section 1735 or other applicable State and Federal regulation.

22 20. LAWS TO BE OBSERVED

23 A-E/PROFESSIONAL is assumed to be familiar with and, at all times, shall observe  
24 and comply with all federal, state and local laws, ordinances, rules and  
25 regulations in any manner affecting the performance of SERVICES under this  
26 AGREEMENT.

21. INDEMNIFICATION AND GENERAL LIABILITY

A-E/PROFESSIONAL shall indemnify, defend with Counsel approved by COUNTY and save  
harmless COUNTY, its elected and appointed officials, officers, agents, and  
employees from and against any and all liability, expense, including defense

1 costs and legal fees, and claims for damages of any nature whatsoever, including,  
2 but not limited to bodily injury, death, personal injury, property damage or  
3 workers' compensation suits arising from or connected with A-E/PROFESSIONAL's  
4 actual or alleged negligent performance of the SERVICES.

5 22. INSURANCE

6 Prior to the provision of services under this Agreement, the A-E/PROFESSIONAL  
7 agrees to purchase all required insurance at A-E/PROFESSIONAL's expense and to  
8 deposit with the County Certificates of Insurance, including all endorsements  
9 required herein, necessary to satisfy the COUNTY that the insurance provisions of  
10 this Agreement have been complied with and to keep such insurance coverage and  
11 the certificates therefore on deposit with the County during the entire term of  
12 this Agreement. In addition, all SPECIAL A-E/PROFESSIONAL's performing work on  
13 behalf of A-E/PROFESSIONAL pursuant to this Agreement shall obtain insurance  
14 subject to the same terms and conditions as set forth herein for  
15 A-E/PROFESSIONAL.

16 All insurance policies required by this Agreement shall declare any deductible or  
17 self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for  
18 automobile liability), which shall specifically be approved by the County  
19 Executive Office (CEO)/Office of Risk Management. A-E/PROFESSIONAL shall be  
20 responsible for reimbursement of any deductible to the insurer. Any self-insured  
21 retentions (SIRs) or deductibles shall be clearly stated on the Certificate of  
22 Insurance.

23 If the A-E/PROFESSIONAL fails to maintain insurance acceptable to the COUNTY for  
24 the full term of this Agreement, the COUNTY may terminate this Agreement.

25 Qualified Insurer

26 The policy or policies of insurance must be issued by an insurer licensed  
to do business in the state of California (California Admitted Carrier).

1  
 2 Minimum insurance company ratings as determined by the most current edition of  
 3 the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall  
 4 be A- (Secure Best's Rating) and VIII (Financial Size Category).

5  
 6 If the A-E/PROFESSIONAL proposes use of a carrier who is a non-admitted carrier  
 7 in the state of California, CEO/Office of Risk Management retains the right to  
 8 approve or reject carrier after a review of the company's performance and  
 9 financial ratings.

10 The policy or policies of insurance maintained by the A-E/PROFESSIONAL shall  
 11 provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

1 The County of Orange shall be added as an additional insured on all insurance  
2 policies required by this Agreement with respect to work done by the  
3 A-E/PROFESSIONAL under the terms of this Agreement (except Workers'  
4 Compensation/Employers' Liability and Professional Liability). An additional  
5 insured endorsement evidencing that the County of Orange is an additional insured  
6 shall accompany the Certificate of Insurance.

7 All insurance policies required by this Agreement shall be primary insurance, and  
8 any insurance maintained by the County of Orange shall be excess and non-  
9 contributing with insurance provided by these policies. An endorsement  
10 evidencing that the A-E/PROFESSIONAL 's insurance is primary and non-contributing  
11 shall specifically accompany the Certificate of Insurance for the Commercial  
12 General Liability.

13 All insurance policies required by this Agreement shall give the County of Orange  
14 30 days notice in the event of cancellation. This shall be evidenced by an  
15 endorsement separate from the Certificate of Insurance. In addition, the  
16 cancellation clause must include language as follows, which edits the pre-printed  
17 ACORD certificate:

18  
19 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE  
20 EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~ENDEAVOR TO~~ MAIL 30 DAYS  
21 WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT FAILURE TO~~  
22 ~~MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON~~  
23 ~~THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

24 All insurance policies required by this Agreement shall waive all rights of  
25 subrogation against the County of Orange and members of the Board of Supervisors,  
26 its elected and appointed officials, officers, agents and employees when acting  
within the scope of their appointment or employment.

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

The Commercial General Liability policy shall contain a severability of interests clause.

The A-E/PROFESSIONAL is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The A-E/PROFESSIONAL will comply with such provisions and shall furnish the County satisfactory evidence that the A-E/PROFESSIONAL has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates and endorsements should be forwarded to the agency/department address listed on the Agreement.

If the A-E/PROFESSIONAL fails to provide the insurance certificates and endorsements within seven days of notification by COUNTY, award may be made to the next qualified A-E/PROFESSIONAL.

COUNTY expressly retains the right to require A-E/PROFESSIONAL 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.

COUNTY shall notify A-E/PROFESSIONAL in writing of changes in the insurance requirements. If A-E/PROFESSIONAL does not deposit copies of acceptable

1 certificates of insurance and endorsements with COUNTY incorporating such  
2 changes within thirty days of receipt of such notice, this Agreement may be in  
3 breach without further notice to A-E/PROFESSIONAL, and COUNTY shall be  
4 entitled to all legal remedies.

5 The procuring of such required policy or policies of insurance shall not be  
6 construed to limit A-E/PROFESSIONAL 's liability hereunder nor to fulfill the  
7 indemnification provisions and requirements of this Agreement.

8  
9 The County of Orange Certificate of Insurance and the Special Endorsement for  
10 the County of Orange can be utilized to verify compliance with the above-  
11 mentioned insurance requirements in place of commercial insurance certificates  
12 and endorsements.

13 23. NOTICES

14 Notices and correspondence in connection with this AGREEMENT shall be addressed  
15 as set forth below or as either PARTY may hereinafter designate by written  
16 notice to the other.

17 **COUNTY**

18 COUNTY OF ORANGE/RDMD  
19 Attn: Karen Hauptly  
1750 S. Douglass Road  
Anaheim, CA 92806

20 **A-E/PROFESSIONAL**

21 RBF Consulting  
22 Attn: Tom Bonigut  
14725 Alton Parkway  
Irvine, CA 92618-2027

23  
24 24. ATTACHMENTS

25 This AGREEMENT includes the following attachments which are part hereof:

26 Exhibit A - Scope of Work

Exhibit B - Payment of Compensation

1 Exhibit C - Rate Schedule

2 Exhibit D - Child Support Enforcement

3 25. AMENDMENTS

4 No alteration or variation of the terms of this AGREEMENT shall be valid unless  
5 made in writing and signed by the PARTIES hereto, and no oral understanding or  
6 agreement not incorporated herein shall be binding on any of the PARTIES hereto.

7 26. CONSENT TO BREACH NOT WAIVER

8 No term or Provision of this AGREEMENT shall be deemed waived and no breach  
9 excused, unless such waiver of consent shall be in writing, signed by the PARTY  
10 claimed to have waived or consented. Any consent by any PARTY to, or waiver of, a  
11 breach by the other, whether express or implied, shall not constitute a waiver of  
12 any other breach of the provision or any other provision of this AGREEMENT.  
13 Failure of either PARTY to enforce any provision of this AGREEMENT at any time  
14 shall not be construed as a waiver of that provision.

15 27. CHILD SUPPORT ENFORCEMENT REQUIREMENTS

16 To comply with child support enforcement requirements of the COUNTY, within 30  
17 days of notification of selection for award of PROJECT, A-E/PROFESSIONAL agrees  
18 to furnish to the DIRECTOR the following (See Exhibit D, Child Support  
19 Enforcement):

- 20 1. In the case of an individual A-E/PROFESSIONAL, his/her name, date of  
21 birth, Social Security number, and residence address;
- 22 2. In the case of an A-E/PROFESSIONAL doing business in a form other than as  
23 an individual, the name, date of birth, Social Security Number, and  
24 residence address of each individual who owns an interest of 10 percent or  
25 more in the A-E/PROFESSIONAL's contracting entity;
- 26

1 3. A certification that the A-E/PROFESSIONAL has fully complied with all the  
2 applicable federal and state reporting requirements regarding its  
3 employees; and

4 4. A certification that the A-E/PROFESSIONAL has fully complied with all  
5 lawfully served Wage and Earnings Assignment Orders and Notices of  
6 Assignment and will continue to so comply.

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

10 Failure of the A-E/PROFESSIONAL to timely submit the data and/or certifications  
11 required above or to comply with all federal and state reporting requirements for  
12 child support enforcement or to comply with all lawfully served Wage and Earnings  
13 Assignment Orders and Notices of Assignment, shall constitute a material breach  
14 of the AGREEMENT. Failure to cure such breach within 60 calendar days of notice  
15 from COUNTY shall constitute grounds for termination of the AGREEMENT.

16 28. LIMITATION OF OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS

17 The obligation of the COUNTY is subject to the availability of funds appropriated  
18 for this purpose and nothing contained herein shall be construed as obligating  
19 the COUNTY to expend or as involving the COUNTY in any contract or obligation for  
20 the future payment of money in excess of appropriations authorized by law. In  
21 the event this AGREEMENT extends into succeeding fiscal year periods and the  
22 Board of Supervisors does not allocate sufficient funds for the next succeeding  
23 fiscal year's payments, this AGREEMENT shall be terminated as of June 30 of the  
24 then-current fiscal year. COUNTY shall notify A-E/PROFESSIONAL in writing of  
25 such non-allocation at the earliest possible date.

26 29. DEFAULT FOR INSOLVENCY

COUNTY may cancel this AGREEMENT for default in the event of:



1 A. A-E/PROFESSIONAL's insolvency - A-E/PROFESSIONAL shall be deemed to be  
2 insolvent if it has ceased to pay its debts in the ordinary course of business or  
3 cannot pay its debts as they become due, whether it has filed for bankruptcy or  
4 not, and whether insolvent within the meaning of the Federal Bankruptcy Law or  
5 not;

6 B. The filing of a voluntary petition for reorganization or bankruptcy;

7 C. The appointment - of a Receiver or Trustee for Consultant; or

8 D. A-E/PROFESSIONAL's execution of an assignment for the benefit of creditors.

9 30. ENTIRETY

10 This AGREEMENT and its attached exhibits contain the entire agreement between the  
11 PARTIES with respect to the matters herein and there are no restrictions,  
12 promises, warranties or undertakings other than those set forth or referred to  
13 herein.

14 31. SEVERABILITY

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

18 32. GOVERNING LAW AND VENUE

19 This AGREEMENT has been negotiated and executed in the State of California and  
20 shall be governed by and construed under the laws of the State of California. In  
21 the event of any legal action to enforce or interpret this AGREEMENT, the sole  
22 and exclusive venue shall be a court of competent jurisdiction located in Orange  
23 County, California. The PARTIES hereto agree to and do hereby submit to the  
24 jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.  
25 The PARTIES specifically agree that by soliciting and entering into and  
26 performing SERVICES under this AGREEMENT, the A-E/PROFESSIONAL shall be deemed to  
constitute doing business within Orange County from the time of solicitation of  
work, through the period when all work under this AGREEMENT is completed, and

1 continuing until the expiration of any applicable limitations period.

2 Furthermore, the PARTIES have specifically agreed, as part of the consideration  
3 given and received for entering into this AGREEMENT, to waive any and all rights  
4 to request that an action be transferred for trial to another county under Code  
5 of Civil Procedure Section 394.

6 33. AUTHORITY

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

11 34. CALENDAR DAYS

12 Any reference to the word "day" or "days" herein shall mean calendar day or  
13 calendar days, respectively, unless otherwise expressly provided.

14 35. ATTORNEY'S FEES

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

18 38. INTERPRETATION

19 This AGREEMENT has been negotiated at arm's length and between persons  
20 sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. In  
21 addition, each PARTY has been represented by experienced and knowledgeable  
22 independent legal counsel of their own choosing, or has knowingly declined to  
23 seek such counsel despite having the opportunity to do so. Each PARTY further  
24 acknowledges that they have not been influenced to any extent whatsoever in  
25 executing this AGREEMENT by any other PARTY hereto or by any person representing  
26 them, or both. 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

1 applicable and is waived. The provisions of this AGREEMENT shall be interpreted  
2 in a reasonable manner to effect the purpose of the PARTIES and this AGREEMENT.

3 39. HEADINGS

4 The headings in this AGREEMENT are for convenience of reference only and shall  
5 not limit or otherwise affect the meaning thereof.

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

3 **COUNTY OF ORANGE,**  
4 a body corporate and politic

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

By: \_\_\_\_\_  
Chairman of Its Board of Supervisors

7 SIGNED AND CERTIFIED THAT A COPY OF THIS  
8 AGREEMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

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

By: \_\_\_\_\_  
DARLENE J. BLOOM, Clerk of the Board of  
Supervisors of Orange County, California

11 APPROVED AS TO FORM:  
12 ORANGE COUNTY, CALIFORNIA

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14 By: \_\_\_\_\_  
Geoffrey, K. Hunt, Deputy

15  
16 Date: \_\_\_\_\_

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**RBF CONSULTING,**  
a private corporation

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

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

Name:

Title:

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

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

Name:

Title: