

EXHIBIT A

1 **A. Retainer**

2 1. OCFCD does hereby retain A/E to perform the PROJECTS/SERVICES
3 as required by this AGREEMENT.

4 2. A professional who shall be assigned to PROJECT/SERVICES and
5 whose services are offered by A/E and accepted by OCFCD is Mr. Jaime Burrola.

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

- 13 a. RBF Consulting, Inc.
- 14 b. CPM, Inc.
- 15 c. Vizion
- 16 d. Wieland Acoustics
- 17 e. PCR Services Corporation
- 18 f. Tetra Tech, Inc.

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

22 5. A/E's employment of independent consultants/contractors shall
23 not relieve A/E from the performance of its own responsibilities pursuant to
24 this AGREEMENT. However, all consultants/contractors independently
25 contracting with OCFCD shall be independently liable to OCFCD for the
26 performance of the work pursuant to their agreements, and A/E shall have no

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1 liability for work by contractors independently contracting with OCFCD.

2 **B. PROJECTS/SERVICES**

3 1. Description of PROJECTS/SERVICES

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

8 b. A/E shall be responsible for submitting all
9 PROJECT/SERVICES to OCFCD in a form which has been thoroughly reviewed and
10 checked for completeness, accuracy and consistency; and, any PROJECT/SERVICES
11 not meeting this requirement will be returned to A/E prior to review by
12 OCFCD.

13 2. Design Criteria and Standards

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

16 3. Scheduling

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

25 b. A/E shall allow at least five (5) working days for OCFCD
26 review of progress work schedule. In planning work A/E should anticipate and allow

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1 ten (10) working days for OCFCD review of each submittal required in Exhibit A.

2 c. A/E shall hold meetings and workshops as required in
3 Exhibit A or on an "as-needed" basis as determined by DIRECTOR to review
4 progress of work, adherence to progress schedule, coordination of work,
5 scheduling of seminars, if needed, and to resolve any problems that may
6 develop.

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

10 e. A/E shall complete all the work of PROJECTS/SERVICES
11 and obtain all approvals by the OCFCD within the time frame indicated in
12 Exhibit A except A/E shall not be responsible for any delay beyond the
13 control of A/E.

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

21 C. Assistance by OCFCD

22 1. OCFCD shall assign an appropriate staff member to work with
23 A/E in connection with the work of this AGREEMENT. Said staff member's
24 duties will consist of the giving of advice and consultations, assisting A/E
25 in negotiations with other public agencies and private parties, miscellaneous
26 items which in the judgment of A/E or OCFCD'S staff warrant attention, and

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1 all other duties as may be described in Exhibit A.

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

4 **D. Non-Employment of OCFCD Personnel**

5 A/E agrees that no employee of OCFCD, including but not limited to
6 those who may be involved in this PROJECT shall be given or offered
7 employment by A/E during the life of this AGREEMENT regardless of the
8 assignments said employee may be given or the days or hours employee may
9 work.

10 **E. Non-Discrimination**

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

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

20 **F. Employee Eligibility Verification**

21 1. A/E warrants that it fully complies with all Federal and
22 State statutes and regulations regarding the employment of aliens, and others
23 and that all its employees performing work under this AGREEMENT meet the
24 citizenship or alien status requirement set forth in Federal statutes and
25 regulations. A/E shall obtain, from all employees performing work hereunder,
26 all verification and other documentation of employment eligibility status

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1 required by Federal or State statutes and regulations, including but not
2 limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324
3 et seq., as they currently exist and as they may be hereafter amended. A/E
4 shall retain all such documentation for all covered employees for the period
5 prescribed by the law.

6 2. A/E shall indemnify, defend with counsel approved in writing
7 by OCFCD, and hold harmless, the OCFCD, the OCSD, the Santa Ana Watershed
8 Project Authority (SAWPA), the City of Yorba Linda, their agents, officers,
9 and employees (collectively, "OCFCD INDEMNITEES") from employer sanctions
10 and any other liability which may be assessed against A/E, the OCFCD and/or
11 the OCFCD INDEMNITEES in connection with any alleged violation of any Federal
12 or State statutes or regulations pertaining to the eligibility for employment
13 of any persons performing work under this AGREEMENT.

14 G. Termination of Contract for Cause

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

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

20 3. In the event the alleged breach is not cured by A/E prior to
21 termination, all work performed by A/E pursuant to this AGREEMENT, which
22 work has been reduced to plans or other documents, shall be made available
23 to OCFCD.

24 H. Termination for Convenience

25 1. Notwithstanding any other provision of the AGREEMENT, OCFCD
26 may at any time, and without cause, terminate this AGREEMENT in whole or in

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1 part, upon not less than seven (7) calendar days' written notice to the A/E.
2 Such termination shall be effected by delivery to the A/E of a notice of
3 termination specifying the effective date of the termination and the extent
4 of the Work to be terminated.

5 2. A/E shall immediately stop work in accordance with the notice
6 and comply with any other direction as may be specified in the notice or as
7 provided subsequently by OCFCD.

8 3. OCFCD shall pay the A/E for the Work completed prior to the
9 effective date of the termination, and such payment shall be the A/E's sole
10 remedy under this AGREEMENT.

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

14 5. A/E shall insert in all subcontracts that the Subcontractor
15 shall stop work on the date of and to the extent specified in a notice of
16 termination, and shall require Subcontractors to insert the same condition
17 in any lower tier subcontracts.

18 I. Term of Agreement and Maximum Compensation

19 ~~The term of this AGREEMENT is for six (6) years commencing on the~~
20 ~~date of execution by the Board of Supervisors, with a maximum allowable~~
21 ~~compensation including Extra Work as described below in Section J of nine~~
22 ~~million four hundred seventy one thousand three hundred seventy four dollars~~
23 ~~(\$9,471,374).~~

24 The term of this AGREEMENT is for six (6) years commencing on the
25 date of execution by the Board of Supervisors of AMENDMENT No. 2, with a
26 maximum allowable compensation including Extra Work as described below in

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1 Section J of ten million eight hundred fifty-three thousand one hundred
2 ninety-three dollars (\$10,853,193).

3 J. A/E Compensation and Extra Work

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

6 ~~1. For completion and approval of all PROJECTS/SERVICES where~~
7 ~~"Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES~~
8 ~~required by and ordered in writing by DIRECTOR which changes constitute a~~
9 ~~change in or departure from said approved portions of PROJECTS/SERVICES) is~~
10 ~~not authorized, compensation including reimbursables shall be described and~~
11 ~~payable as stipulated in the Fee Schedule, hereinafter referred to as~~
12 ~~"Exhibit B", attached hereto and incorporated herein by reference. All~~
13 ~~Optional Items shall be subject to written approval by the DIRECTOR prior to~~
14 ~~performance of tasks. A/E shall be compensated via monthly progress payments~~
15 ~~less ten percent (10%) retention of the actual approved invoice amount during~~
16 ~~the course of the AGREEMENT. Final payment of one hundred percent (100%) of~~
17 ~~the approved invoice amount, less previous payments, will be made within~~
18 ~~thirty (30) days from written approval and/or upon completion of the~~
19 ~~PROJECTS/SERVICES as determined by DIRECTOR.~~

20 1. For completion and approval of all PROJECTS/SERVICES where
21 "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES
22 required by and ordered in writing by DIRECTOR which changes constitute a
23 change in or departure from said approved portions of PROJECTS/SERVICES) is
24 not authorized, compensation including reimbursables shall be described and
25 payable as stipulated in the Fee Schedule, hereinafter referred to as
26 "Exhibit B-2", attached hereto and incorporated herein by reference. All

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1 Optional Items shall be subject to written approval by the DIRECTOR prior to
2 performance of tasks. A/E shall be compensated via monthly progress payments
3 less ten percent (10%) retention of the actual approved invoice amount during
4 the course of the AGREEMENT. Final payment of one hundred percent (100%) of
5 the approved invoice amount, less previous payments, will be made within
6 thirty (30) days from written approval and/or upon completion of the
7 PROJECTS/SERVICES as determined by DIRECTOR.

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

9 a. The amount for Extra Work shall be determined using the
10 Hourly Rate Schedule, hereinafter referred to as "Exhibit C", attached hereto
11 and incorporated herein by reference. Extra Work shall be required by and
12 ordered in writing by DIRECTOR. DIRECTOR may order Extra Work not to exceed
13 five thousand dollars (\$5,000) for contracts of less than fifty thousand
14 (\$50,000), and may order Extra Work up to ten percent (10%) for contracts not
15 exceeding two hundred fifty thousand dollars (\$250,000). For contracts
16 greater than two hundred fifty thousand dollars (\$250,000), Extra Work shall
17 not exceed twenty-five thousand dollars (\$25,000) plus one percent (1%) of
18 the original contract amount in excess of two hundred fifty thousand dollars
19 (\$250,000). In no case shall Extra Work exceed one hundred thousand dollars
20 (\$100,000).

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

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

26 a. For failure to complete and secure approval of the

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1 first required submittal there shall be no compensation.

2 ~~b. For failure to complete and secure approval of other~~
3 ~~authorized phases, A/E shall, upon completion of PROJECTS/SERVICES by others,~~
4 ~~be entitled to receive compensation based on approved work of~~
5 ~~PROJECTS/SERVICES not to exceed the amounts specified in Exhibit B for that~~
6 ~~particular submittal, plus the reasonable value as determined by OCFCD of the~~
7 ~~non-approved work; provided, however, that if the cost to OCFCD to complete~~
8 ~~the contract exceeds the amount specified herein, A/E shall be liable to~~
9 ~~OCFCD for such excess costs attributable to A/E's breach of the AGREEMENT.~~

10 b. For failure to complete and secure approval of other
11 authorized phases, A/E shall, upon completion of PROJECTS/SERVICES by others,
12 be entitled to receive compensation based on approved work of
13 PROJECTS/SERVICES not to exceed the amounts specified in Exhibit B-2 for that
14 particular submittal, plus the reasonable value as determined by OCFCD of the
15 non-approved work; provided, however, that if the cost to OCFCD to complete
16 the contract exceeds the amount specified herein, A/E shall be liable to
17 OCFCD for such excess costs attributable to A/E's breach of the AGREEMENT.

18 ~~4. Unless otherwise indicated in Exhibit A, PROJECT/SERVICES~~
19 ~~shall be performed as requested by DIRECTOR and on a time and materials~~
20 ~~basis. These services shall be billed at the A/E personnel classification~~
21 ~~and respective hourly rate in accordance with Exhibit C and subject to the~~
22 ~~itemized fee schedule as described in Exhibit B-1.~~

23 4. Unless otherwise indicated in Exhibit A, PROJECT/SERVICES
24 related to Construction Management included in shall be performed as
25 requested by DIRECTOR and on a time and materials basis. These services shall
26 be billed at the A/E personnel classification and respective hourly rate in

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1 accordance with Exhibit C and subject to supplemental and optional services
2 as described in Exhibit B-2.

3 5. As work under this AGREEMENT progresses, it may be determined
4 by DIRECTOR that some PROJECT/SERVICES tasks or portions thereof may not be
5 required. Any funds not used for the various tasks may be shifted among the
6 various phases and tasks at the discretion of DIRECTOR.

7 K. Laws to be Observed

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

11 L. Errors and Omissions

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

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

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M. Insurance

1
2 1. A/E shall maintain specified insurance coverage appropriate to
3 protect against risks arising from or connected with the subject matters of
4 this AGREEMENT, acceptable to OCFCD, effective on the first day of work and
5 in full force throughout the full term of this AGREEMENT.

6 2. A/E agrees to deposit with OCFCD, within fourteen (14)
7 calendar days of the date of execution of this AGREEMENT at 300 North Flower
8 Street, Room No. 721, Santa Ana, CA 92702, certificates of insurance and
9 endorsements (certificates can be in a form obtainable from OCFCD), in
10 duplicate to satisfy OCFCD, that insurance requirements of this AGREEMENT
11 have been complied with and to keep such insurance in effect and the
12 certificates therefor on deposit with OCFCD, during the entire term of this
13 AGREEMENT.

14 3. A/E agrees to furnish additional certified copies of
15 insurance policy(ies) if requested by letter from OCFCD.

16 4. OCFCD, shall retain the right to review the coverage, form,
17 and amount of the insurance provided by A/E prior to the start of work on
18 PROJECTS/SERVICES by A/E. If, in the opinion of DIRECTOR, the certificates
19 and endorsements provided by A/E do not provide the coverage, form, and
20 amount of insurance as required and listed herein, OCFCD, shall notify A/E in
21 writing that A/E is in default of the AGREEMENT. A/E shall have fourteen
22 (14) calendar days from the date of such notification from OCFCD to provide
23 adequate insurance. If A/E fails to provide adequate insurance within the
24 time frame specified, OCFCD, shall terminate the AGREEMENT without
25 compensation to A/E.

26 5. OCFCD, shall retain the right at any time to review the

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1 coverage, form, and amount of the insurance required hereby. If, in the
2 opinion of DIRECTOR, the insurance provisions as described in this AGREEMENT
3 do not provide adequate protection for OCFCD, OCFCD may require A/E to obtain
4 insurance sufficient in coverage, form, and amount to provide adequate
5 protection. OCFCD'S requirements shall be reasonable but shall be designed
6 to assure protection from and against the kind and extent of the risks which
7 exist at the time a change in insurance is required.

8 6. The costs of such changes in insurance during the course of
9 work as may be requested by OCFCD shall be paid by OCFCD, to A/E as either
10 Extra Work, as described in paragraph J of this AGREEMENT, or as an amendment
11 to the AGREEMENT.

12 7. OCFCD shall notify A/E in writing of changes in the insurance
13 requirements; and if A/E does not deposit copies of acceptable certificates
14 and endorsements with OCFCD incorporating such changes within fourteen (14)
15 days of receipt of such notices, this AGREEMENT shall be in default without
16 further notice to A/E, and OCFCD, shall be entitled to all legal remedies.

17 8. The procuring of such required policy(ies) of insurance shall
18 not be constructed to limit A/E'S liability hereunder nor to fulfill the
19 indemnification provisions of this AGREEMENT.

20 9. All insurance policies required by this AGREEMENT shall
21 declare any deductible or self-insured retention (SIR) in an amount in excess
22 of twenty-five thousand dollars (\$25,000) [Five thousand dollars (\$5,000) for
23 automobile liability], which shall specifically be approved by the County
24 Executive Office (CEO)/Office of Risk Management. A/E shall be responsible
25 for any deductible to the insurer. Any self-insured retentions (SIRs) or
26 deductibles shall be clearly stated on the Certificate of Insurance.

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

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

8 12. If the carrier is a non-admitted carrier in the state of
9 California, CEO/Office of Risk Management retains the right to approve or
10 reject carrier after a review of the company's performance and financial
11 ratings.

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

<u>Coverage</u>	<u>Minimum Limit</u>
14 Workers' Compensation	Statutory
15 Employer's Liability	\$1,000,000 per occurrence
16 Commercial General Liability 17 with broad form and contractual 18 liability	\$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate
19 Auto Liability including coverage 20 for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
21 Professional Liability 22 (Errors and Omissions)	\$5,000,000 claims made

23 14. A/E's insurance policy(ies) shall contain the following
24 additional clauses or clauses, or if not contained in the policy(ies) shall
25 be added by an endorsement to the policy(ies):

26 a. A "Discovery Clause" or its equivalent stating that

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1 coverage will be provided for claims made following insurance policy
2 expiration if A/E gives written notice of a claim to the insurer during the
3 policy term (for Professional Liability only). If the Professional Liability
4 policy is a "claims made" policy, A/E shall agree to maintain professional
5 liability coverage for five (5) years following completion of the contract.

6 b. A clause stating, "This insurance shall not be
7 cancelled, reduced in scope or coverage, changed or amended until after
8 thirty (30) days written notice has been given to: DIRECTOR, Orange County
9 Public Works, at 300 North Flower Street, Santa Ana, CA 92703-5000; and,
10 Orange County Risk Management Services, P.O. Box 327, Santa Ana, CA 92703."
11 This shall be evidenced by an endorsement separate from the Certificate of
12 Insurance. In addition, the cancellation clause must include language as
13 follows, which edits the pre-printed ACORD certificate:

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

21 c. A clause stating, "This insurance shall be primary
22 insurance and any insurance maintained by the 'County of Orange', the 'Orange
23 County Flood Control District', the 'Orange County Sanitation District', the
24 'Santa Ana Watershed Project Authority' and/or the 'City of Yorba Linda'
25 shall be excess and non-contributing."

26 d. A clause stating, "The following parties are hereby

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1 named as additional insureds: 'County of Orange', the 'Orange County Flood
2 Control District', the 'Orange County Sanitation District', the 'Santa Ana
3 Watershed Project Authority' and the 'City of Yorba Linda' (for Commercial
4 General Liability and Auto Liability only)."

5 e. A clause stating, "This insurance shall allow for
6 severability of interest of the: 'County of Orange' the 'Orange County Flood
7 Control District', the 'Orange County Sanitation District', the 'Santa Ana
8 Watershed Project Authority' and the 'City of Yorba Linda'."

9 f. A clause stating, "Workers' Compensation insurance
10 shall waive all rights of subrogation against the 'County of Orange', the
11 'Orange County Flood Control District', the 'Orange County Sanitation
12 District', the 'Santa Ana Watershed Project Authority' and the 'City of Yorba
13 Linda'."

14 g. Insurance policy(ies) obtained by A/E shall not contain
15 insurance policy riders or clauses which shall negate or modify any
16 provision(s) or requirement(s) contained within the AGREEMENT.

17 N. Indemnification

18 A/E agrees to, indemnify, defend with counsel approved in writing
19 by OCFCD, and hold OCFCD, the County of Orange ("COUNTY"), OCSD, the Santa
20 Ana Watershed Project Authority ("SAWPA"), and the City of Yorba Linda, their
21 elected and appointed officials, officers, employees, agents and those
22 special districts and agencies which OCFCD'S Board of Supervisors acts as
23 the governing Board ("OCFCD INDEMNITEES") harmless from any claims, demands
24 or liability of any kind or nature, including but not limited to personal
25 injury or property damage, arising out of, pertaining to, or relating to the
26 negligence, recklessness, or willful misconduct of the A/E. If judgment is

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1 entered against A/E and OCFCD by a court of competent jurisdiction because of
2 the concurrent active negligence of A/E and OCFCD or OCFCD INDEMNITEES, A/E
3 and OCFCD agree that liability will be apportioned as determined by the
4 court. Neither party shall request a jury apportionment. Notwithstanding
5 anything stated above, nothing contained herein shall relieve A/E of any
6 insurance requirements or obligations created elsewhere in this AGREEMENT.

7 O. Award of Construction Agreement and Other Future Contracts

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

18 P. Amendments

19 No alteration or variation of the terms of this AGREEMENT shall be
20 valid unless made in writing and signed by the parties; no oral understanding
21 or agreement not incorporated herein shall be binding on either of the
22 parties; and no exceptions, alternatives, substitutes or revisions are valid
23 or binding on OCFCD unless authorized by OCFCD in writing.

24 Q. Successors and Assigns

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

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1 assigns.

2 **R. Entirety**

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

5 **S. Severability**

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

10 **T. Binding Obligation**

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

15 **U. Governing Law and Venue**

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

24 2. The PARTIES specifically agree that by soliciting and
25 entering into and performing PROJECTS/SERVICES under this AGREEMENT, the A/E
26 shall be deemed to constitute doing business within Orange County from the

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1 time of solicitation of work, through the period when all PROJECTS/SERVICES
2 under this AGREEMENT is completed, and continuing until the expiration of any
3 applicable limitations period.

4 V. Child Support Enforcement Requirements

5 1. To comply with child support enforcement requirements of the
6 OCFCD, within thirty (30) days of notification of selection for award of
7 PROJECTS/SERVICES, A/E agrees to complete and furnish to DIRECTOR the
8 information required in County of Orange Child Support Enforcement Contract
9 Certification, hereinafter referred to as "Exhibit D," attached hereto and
10 incorporated herein by reference.

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

17 3. It is expressly understood that this data will be transmitted
18 by OCFCD to governmental agencies charged with the establishment and
19 enforcement of child support orders and for no other purposes.

20 W. Ownership of Documents

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

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

8 **X. Confidentiality**

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

17 2. Nothing furnished to A/E which is generally known among flood
18 control districts in Southern California shall be deemed confidential.

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

23 **Y. Publication**

24 1. No copies, sketches or graphs, including graphic art work,
25 resulting from performance or prepared in connection with the
26 PROJECTS/SERVICES, are to be released by A/E and/or anyone acting under the

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1 supervision of A/E to any person, partnership, company, corporation, or
2 agency, without prior written approval by OCFCD, except as necessary for the
3 performance of the PROJECTS/SERVICES.

4 2. All press releases, including graphic display information to
5 be published in newspapers, magazines, etc., are to be administered only by
6 OCFCD unless otherwise agreed to in writing by both parties.

7 Z. Records and Audit/Inspections

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

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

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

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

23 AA. Notices

24 1. Any and all notices, requests, demands and other
25 communications contemplated, called for, permitted, or required to be given
26 hereunder shall be in writing, except through the course of the PARTIES'

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1 project managers' routine exchange of information and cooperation during the
2 PROJECTS/SERVICES.

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

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

13 For A/E:

14 Name: MWH Americas, Inc.
15 Address: 618 Michillinda Avenue, Suite 200
16 City: Arcadia, CA 91007
17 Attn: Jaime Burrola
18 Phone: (626) 568-6118
19 E-mail: Jaime.Burrola@us.mwhglobal.com

20 For OCFCD:

21 Name: Manager, OCPW/Santa Ana River Project
22 Address: P.O. Box 4048
23 City: Santa Ana, CA 92702-4048
24 Attn: Lance Natsuhara, P.E.
25 Phone: (714) 647-3954
26 E-mail: Lance.Natsuhara@ocpw.ocgov.com

22 AB. Attorney's Fees

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

26 AC. Interpretation

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

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

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

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

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

17 **AD. Headings**

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

22 **AE. Acceptance**

23 Unless otherwise agreed to in writing by OCFCD acceptance shall
24 not be deemed complete unless in writing and until all the services have
25 actually been received, inspected, and tested to the satisfaction of OCFCD.

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

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

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

7 **AG. Remedies Not Exclusive**

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

12 **AH. Independent Contractor**

13 1. A/E shall be considered an independent contractor and neither
14 A/E, its employees, nor anyone working under A/E shall be considered an agent
15 or an employee of OCFCD.

16 2. Neither A/E, its employees nor anyone working under A/E shall
17 qualify for workers' compensation or other fringe benefits of any kind
18 through OCFCD.

19 **AI. Bills and Liens**

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

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1 **AJ. Changes**

2 A/E shall make no changes in the work or perform any additional
3 work without DIRECTOR'S specific written approval.

4 **AK. Assignment**

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

14 **AL. Changes in Ownership**

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

22 **AM. Force Majeure**

23 A/E shall not be assessed with damages or unsatisfactory
24 performance penalties during any delay beyond the time named for the
25 performance of this AGREEMENT caused by any act of God, war, civil disorder,
26 employment strike or other cause beyond its reasonable control, provided A/E

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1 gives written notice of the cause of the delay to OCFCD within thirty-six
2 (36) hours of the start of the delay and A/E avails himself of any available
3 remedies.

4 AN. Compliance with Laws

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

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

17 AO. Calendar Days

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

20 AP. Breach of Contract

21 The failure of the A/E to comply with any of the provisions,
22 covenants or conditions of this AGREEMENT shall be a material breach of this
23 AGREEMENT. In such event, in addition to any other remedies available at law,
24 in equity, or otherwise specified in this AGREEMENT, the OCFCD may:

25 1. afford the A/E written notice of the breach and ten (10)
26 calendar days or such shorter time that may be specified in this AGREEMENT

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1 within which to cure the breach;

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

4 3. offset those monies disallowed pursuant to the above, against
5 any monies billed by the A/E but yet unpaid by the OCFCD.

6 **AQ. Default**

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

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

25 3. In the event of the cancellation of this AGREEMENT, either in
26 whole or in part, by reason of the default or breach by the A/E, any loss or

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1 damage sustained by the OCFCD in procuring any equipment or service which the
2 A/E agreed to supply under this AGREEMENT shall be borne and paid for by the
3 A/E.

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

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

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

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

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

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

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1 **AS. Title to Data**

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

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

12 **AT. Availability of Funds**

13 The obligation of OCFCD is subject to the availability of funds
14 appropriated for this purpose, and nothing herein shall be construed as
15 obligating the OCFCD to expend or as involving the OCFCD in any contract or
16 other obligation for future payment of money in excess of appropriations
17 authorized by law.

18 **AU. Contingency of Funding**

19 A/E acknowledges that funding or portions of funding for this
20 AGREEMENT may also be contingent upon receipt of funds from, and/or
21 appropriation of funds by, the OCSD and SAWPA to OCFCD. If such funding
22 and/or appropriations are not forthcoming, or otherwise limited, OCFCD may
23 immediately terminate or modify this AGREEMENT without penalty.

24 **AV. Contract Construction**

25 The parties acknowledge that each party and its counsel have
26 reviewed this AGREEMENT and that the normal rule of construction to the

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1 effect that any ambiguities are to be resolved against the drafting party
2 shall not be employed in the interpretation of this AGREEMENT or any
3 amendment or exhibits hereto.

4 **AW. Waiver of Jury Trial**

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

14 ///

15 ///

