

ATTACHMENT A

A G R E E M E N T

THIS AGREEMENT, hereinafter referred to as "AGREEMENT," for purposes of identification hereby numbered D10-004, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

BY AND AMONGST

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

AND

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

AND

UltraSystems, a California Corporation, hereinafter referred to as "A/E",

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

RECITALS

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

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

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

1           **A. Retainer**

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

4           2. A professional, duly registered in the State of  
5 California, who shall be assigned to PROJECTS/SERVICES and whose services are  
6 offered by A/E and accepted by COUNTY and/or DISTRICT, as applicable, is  
7 Richard Friesen, Phd.

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

- 15                   a. ArchaeoPaleo Resource Management
- 16                   b. CRM Tech
- 17                   c. Ralph Osterling, Biologist
- 18                   d. Alissa Cope, Biologist
- 19                   e. Kay Greeley, Biologist
- 20                   f. Davenport Biological Services
- 21                   g. Deane Organization
- 22                   h. Stantec
- 23                   i. Psomas
- 24                   j. Forde Biological
- 25                   k. CSULB Foundation
- 26                   d. Mark Levin, Biologist

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1 e. San Marino Environmental Associates - SMEA

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

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

13 **B. PROJECTS/SERVICES**

14 1. Description of PROJECTS/SERVICES

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

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

25 2. Design Criteria and Standards

26 All PROJECTS/SERVICES shall be performed in accordance with

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1 instructions, criteria and standards set forth by the DIRECTOR.

## 2 3. Scheduling

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

12 b. A/E shall allow at least five (5) working days for COUNTY  
13 and/or DISTRICT, as applicable, review of progress work schedule. In planning  
14 work A/E should anticipate and allow ten (10) working days for COUNTY and/or  
15 DISTRICT, as applicable, review of each submittal required in Exhibit A.

16 c. A/E shall meet at least once every two (2) weeks with  
17 COUNTY and/or DISTRICT, as applicable, to review progress of work, adherence  
18 to progress schedule, coordination of work, scheduling of seminars, if  
19 needed, and to resolve any problems that may develop.

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

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

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

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

10 1. COUNTY and/or DISTRICT, as applicable, shall assign an  
11 appropriate staff member to work with A/E in connection with the work of this  
12 AGREEMENT. Said staff member's duties will consist of the giving of advice  
13 and consultations, assisting A/E in negotiations with other public agencies  
14 and private parties, miscellaneous items which in the judgment of A/E or  
15 COUNTY'S and/or DISTRICT'S, as applicable, staff warrant attention, and all  
16 other duties as may be described in Exhibit A.

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

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

20 A/E agrees that no employee of COUNTY and/or DISTRICT, as  
21 applicable, including but not limited to those who may be involved in this  
22 PROJECT shall be given or offered employment by A/E during the life of this  
23 AGREEMENT regardless of the assignments said employee may be given or the  
24 days or hours employee may work.

25 **E. Non-Discrimination**

26 1. In the performance of this AGREEMENT, A/E agrees that it will

1 comply with the requirements of the California Labor Code and not engage nor  
2 permit any subcontractors to engage in discrimination in employment of  
3 persons because of the race, religious creed, color, national origin,  
4 ancestry, physical disability, mental disability, medical condition, marital  
5 status, or sex of such persons.

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

9           **F. Employee Eligibility Verification**

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

21           2. A/E shall indemnify, defend with counsel approved in writing  
22 by COUNTY and/or DISTRICT, as applicable, and hold harmless, the COUNTY  
23 and/or DISTRICT, as applicable, its agents, officers, and employees from  
24 employer sanctions and any other liability which may be assessed against A/E  
25 or the COUNTY and/or DISTRICT, as applicable, or both in connection with any  
26 alleged violation of any Federal or State statutes or regulations pertaining

1 to the eligibility for employment of any persons performing work under this  
2 AGREEMENT.

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

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

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

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

14 **H. Termination for Convenience**

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

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

24 3. COUNTY and/or DISTRICT, as applicable, shall pay the A/E for  
25 the Work completed prior to the effective date of the termination, and such  
26 payment shall be the A/E's sole remedy under this AGREEMENT.

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

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

8           **I. Term and Maximum Compensation of AGREEMENT**

9           The term of this AGREEMENT is for three (3) years commencing on  
10 the date of execution by the Board of Supervisors, with a maximum allowable  
11 compensation of four-hundred thousand dollars (\$400,000)

12           **J. A/E Compensation for Extra Work**

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

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

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

23           a. The amount for Extra Work shall be determined using  
24 Exhibit B. Extra Work shall be required by and ordered in writing by  
25 DIRECTOR. DIRECTOR may order Extra Work not to exceed five thousand dollars  
26 (\$5,000) for contracts of less than fifty thousand (\$50,000), and may order



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1 Extra Work up to ten percent (10%) for contracts not exceeding two hundred  
2 fifty thousand dollars (\$250,000). For contracts greater than two hundred  
3 fifty thousand dollars (\$250,000), Extra Work shall not exceed twenty-five  
4 thousand dollars (\$25,000) plus one percent (1%) of the original contract  
5 amount in excess of two hundred fifty thousand dollars (\$250,000). In no  
6 case shall Extra Work exceed one hundred thousand dollars (\$100,000).

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

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

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

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

24           **K. Laws to be Observed**

25           A/E is assumed to be familiar with and, at all times, shall  
26 observe and comply with all federal, state and local laws, ordinances and

1 regulations in any manner affecting the conduct of the PROJECTS/SERVICES.

2 **L. Errors and Omissions**

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

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

22 **M. Insurance**

23 1. A/E shall maintain insurance coverage appropriate to protect  
24 against all risks arising from or in any way connected with the subject  
25 matters of this AGREEMENT, acceptable to COUNTY and/or DISTRICT, as  
26 applicable, effective on the first day of work and in full force throughout

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1 the full term of this AGREEMENT.

2           2.     A/E agrees to deposit with COUNTY and/or DISTRICT, as  
3 applicable, within fourteen (14) calendar days of the date of execution of  
4 this AGREEMENT at 300 North Flower Street, Room No. 721, Santa Ana, CA 92703,  
5 certificates of insurance and endorsements (certificates shall be in a form  
6 obtainable from COUNTY and/or DISTRICT, as applicable), in duplicate to  
7 satisfy COUNTY and/or DISTRICT, as applicable, that insurance requirements of  
8 this AGREEMENT have been complied with and to keep such insurance in effect  
9 and the certificates therefore on deposit with COUNTY and/or DISTRICT, as  
10 applicable, during the entire term of this AGREEMENT.

11           3.     A/E agrees to furnish additional certified copies of  
12 insurance policy(ies) if requested by letter from COUNTY and/or DISTRICT, as  
13 applicable.

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

25           5.     COUNTY and/or DISTRICT, as applicable, shall retain the right  
26 at any time to review the coverage, form, and amount of the insurance

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

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

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

21           8. The procuring of such required policy(ies) of insurance shall  
22 not be constructed to limit A/E's liability hereunder nor to fulfill the  
23 indemnification provisions of this AGREEMENT.

24           9. All insurance policies required by this AGREEMENT shall  
25 declare any deductible or self-insured retention (SIR) in an amount in excess  
26 of twenty-five thousand dollars (\$25,000) [Five thousand dollars (\$5,000) for

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1 automobile liability], which shall specifically be approved by the County  
2 Executive Office (CEO)/Office of Risk Management. A/E shall be responsible  
3 of any deductible to the insurer. Any self-insured retentions (SIRs) or  
4 deductibles shall be clearly stated on the Certificate of Insurance.

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

8 11. 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 12. Minimum insurance company ratings as determined by the most  
13 current edition of the Best's Key Rating Guide/Property-Casualty/United  
14 States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial  
15 Size Category).

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

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

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2 14. A/E's insurance policy(ies) shall contain the following  
3 additional clauses or clauses shall be added as an endorsement to the policy:

4 a. A "Discovery Clause" or its equivalent stating that  
5 coverage will be provided for claims made following insurance policy  
6 expiration if A/E gives written notice of a claim to the insurer (for  
7 Professional Liability only). If the Professional Liability policy is a  
8 "claims made" policy, A/E shall agree to maintain professional liability  
9 coverage for two years following completion of the contract.

10 b. A clause stating, "This insurance shall not be  
11 cancelled, reduced in scope or coverage, changed or amended until after  
12 thirty (30) days written notice has been given to: DIRECTOR, Orange County  
13 Public Works, at 300 North Flower Street, Santa Ana, CA 92703-5000; and,  
14 Orange County Risk Management Services, P.O. Box 327, Santa Ana, CA 92702."  
15 This shall be evidenced by an endorsement separate from the Certificate of  
16 Insurance. In addition, the cancellation clause must include language as  
17 follows, which edits the pre-printed ACORD certificate:

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

25 c. A clause stating, "This insurance shall be primary  
26 insurance and any insurance maintained by the "County of Orange" and/or the

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1 "Orange County Flood Control District" shall be excess and non-contributing."

2 d. A clause stating, "The following parties are hereby  
3 named as additional insured: "County of Orange" and the "Orange County Flood  
4 Control District" (for Commercial 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" and the "Orange County  
7 Flood Control District".

8 f. A clause stating, "Workers' Compensation insurance  
9 shall waive all rights of subrogation against the "County of Orange" and the  
10 "Orange County Flood Control District".

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

14 **N. Indemnification**

15 A/E agrees to, indemnify, defend with counsel approved in writing  
16 by COUNTY and/or DISTRICT, as applicable, and hold COUNTY and/or DISTRICT, as  
17 applicable, its elected and appointed officials, officers, employees, agents  
18 and those special districts and agencies which COUNTY'S and/or DISTRICT'S, as  
19 applicable, Board of Supervisors acts as the governing Board ("COUNTY  
20 INDEMNITIEES") harmless from any claims, demands or liability of any kind or  
21 nature, including but not limited to personal injury or property damage,  
22 arising out of, pertaining to, or relating to the negligence, recklessness,  
23 or willful misconduct of the A/E. If judgment is entered against A/E and  
24 COUNTY and/or DISTRICT, as applicable, by a court of competent jurisdiction  
25 because of the concurrent active negligence of A/E and COUNTY and/or  
26 DISTRICT, as applicable, or COUNTY INDEMNITEES, A/E and COUNTY and/or

1 DISTRICT, as applicable, agree that liability will be apportioned as  
2 determined by the court. Neither party shall request a jury apportionment.  
3 Notwithstanding anything stated above, nothing contained herein shall relieve  
4 A/E of any insurance requirements or obligations created elsewhere in this  
5 AGREEMENT.

6 **O. Award of Construction Agreement and Other Future Contracts**

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

17 **P. Amendments**

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



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

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 COUNTY, 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 C," 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 D," attached hereto and incorporated  
16 herein by reference.

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

21 **W. Ownership of Documents**

22 1. All data, including but not limited to letters, reports,  
23 files, plans, drawings, specifications, proposals, sketches, diagrams and  
24 calculations, prepared by A/E and/or anyone acting under the supervision of  
25 A/E pursuant to this AGREEMENT, shall become the property of COUNTY and/or  
26 DISTRICT, as applicable, upon preparation by A/E and may be used by the

1 COUNTY and/or DISTRICT, as applicable, as it may require without additional  
2 cost to the COUNTY and/or DISTRICT, as applicable.

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

10           **X. Confidentiality**

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

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

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

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**Y. Publication**

1. No copies, sketches or graphs, including graphic art work, resulting from performance or prepared in connection with the PROJECTS/SERVICES, 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 COUNTY and/or DISTRICT, as applicable, except as necessary for the performance of the PROJECTS/SERVICES.

2. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by COUNTY and/or DISTRICT, as applicable, unless otherwise agreed to in writing by both parties.

**Z. Records and Audit/Inspections**

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

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

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

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

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

5 **AA. Notices**

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

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

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

21 For A/E:  
22 Name: UltraSystems  
23 Address: 16431 Scientific Way  
24 City: Irvine, CA 92618  
25 Attn: Richard Friesen, PhD.  
26 Phone: 949/788-4900  
E-mail: rfriesen@ultrasystems.com  
Fax: 949/788-4901

1 For COUNTY AND/OR DISTRICT:

2 Name: OC Public Works/Project Management  
3 Address: 300 North Flower Street  
4 City: Santa Ana, CA 92703-5000  
5 Attn: Nardy Khan  
6 Phone: 714/834-2340  
7 E-mail: nardy.khan@ocpw.ocgov.com  
8 Fax: 714/667-6500

9  
10 **AB. Attorney's Fees**

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

14 **AC. Interpretation**

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

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

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

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

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

**AD. Headings**

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

**AE. Acceptance**

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

**AF. Consent to Breach not Waiver**

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

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

**AG. Remedies Not Exclusive**

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

**AH. Independent Contractor**

1. A/E shall be considered an independent contractor and neither A/E, its employees, nor anyone working under A/E shall be considered an agent or an employee of COUNTY and/or DISTRICT, as applicable.

1           2.     Neither A/E, its employees nor anyone working under A/E shall  
2 qualify for workers' compensation or other fringe benefits of any kind  
3 through COUNTY and/or DISTRICT, as applicable.

4           **AI.   Bills and Liens**

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

12           **AJ.   Changes**

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

16           **AK.   Assignment**

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



**AL. Changes in Ownership**

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

**AM. Force Majeure**

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

**AN. Compliance with Laws**

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

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

7           **AO.   Calendar Days**

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

10          **AP.   Breach of Contract**

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

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

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

21           3.    offset those monies disallowed pursuant to the above, against  
22 any monies billed by the A/E but yet unpaid by the COUNTY and/or DISTRICT, as  
23 applicable.

24          **AQ.   Default**

25           1.    In the event any equipment or service furnished by the A/E in  
26 the performance of this AGREEMENT should fail to conform to the

## ATTACHMENT A

Agreement No. D10-004

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

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

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

25           4. Default shall include failure to carry out any of the  
26 requirements of this AGREEMENT, including, but not limited to not providing

ATTACHMENT A

1 enough properly skilled workers or proper materials, persistently  
2 disregarding laws and or ordinances, not proceeding with the  
3 PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating  
4 any provision of this AGREEMENT.

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

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

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

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

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

24           **AS. Title to Data**

25           1. All materials, documents, data or information obtained from  
26 the COUNTY and/or DISTRICT, as applicable, data files or any COUNTY and/or

1 DISTRICT, as applicable, medium furnished to the A/E in the performance of  
2 this AGREEMENT, will at all times remain the property of the COUNTY and/or  
3 DISTRICT, as applicable. Such data or information may not be used or copied  
4 for direct or indirect use by the A/E after completion or termination of this  
5 AGREEMENT without the express written consent of the COUNTY and/or DISTRICT,  
6 as applicable.

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

12           **AT. Availability of Funds**

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

19           **AU. Contract Construction**

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

25           **AV. Waiver of Jury Trial**

26           Each PARTY acknowledges that it is aware of and has had the

ATTACHMENT A

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

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ATTACHMENT A

Agreement No. D10-004

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

3 UltraSystems,  
4 a California Corporation  
Date: 2/17/2010 By Betsy A. Lindsay  
5 Betsy A. Lindsay, President  
6 Print Name & Title

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

8 Date: 2/17/2010 By Betsy A. Lindsay  
9 Betsy A. Lindsay, Secretary  
10 Print Name & Title

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

12 COUNTY OF ORANGE,  
13 a political subdivision of the State of  
14 California

13 Date: \_\_\_\_\_ By \_\_\_\_\_  
14 Chair of the Board of Supervisors  
15 Orange County, CA

16 ORANGE COUNTY FLOOD CONTROL DISTRICT,  
17 a body corporate and politic  
18 Date: \_\_\_\_\_ By \_\_\_\_\_  
19 Chair of the Board of Supervisors  
20 Orange County, CA

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

21 Date: \_\_\_\_\_  
22 \_\_\_\_\_  
23 Darlene J. Bloom  
24 Clerk of the Board of Supervisors  
25 County of Orange, California

23 Date: 2/22/10

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

By: Daniel P. Torres  
Deputy

**EXHIBIT “A”****GENERAL SCOPE OF WORK****FOR****ON-CALL REGULATORY PERMITTING AND ENVIRONMENTAL SERVICES****I. INTRODUCTION**

The County of Orange (COUNTY) and the Orange County Flood Control District (DISTRICT), as applicable, require supplemental professional services to meet workload demands and project scheduling commitments. DISTRICT and COUNTY shall hereinafter be referred to separately or together as “COUNTY.” In order to supplement its existing resources, COUNTY has issued this on-call Environmental Consultant (A/E) services AGREEMENT for use by COUNTY on an as-needed basis. Throughout the remainder of this EXHIBIT A the term “DIRECTOR” will refer to the Director, County of Orange, Orange County Public Works (hereinafter “OCPW”) or the Director of OC Engineering (also referred to as Chief Engineer) or Assistant Director of OC Engineering (also referred to as Assistant Chief Engineer) or Division Manager/OC Engineering/Project Management Division or Manager/OC Engineering/Project Management Division/Projects and Regulatory Permits.

**II. PURPOSE**

The purpose of this Exhibit A is to identify the general project requirements for the on-call professional services to be provided by A/E as part of this AGREEMENT and to describe the administrative process of the AGREEMENT.

**III. COMPENSATION LIMIT**

The amount of contracted work that will be required on an as-needed basis shall not exceed four hundred thousand dollars (\$400,000) excluding extra work, unless otherwise amended in writing by the Board of Supervisors of COUNTY and no specified amount of work, if any, is guaranteed to the A/E.

**IV. DESCRIPTION OF WORK**

The services to be provided include but are not limited to: conducting necessary biological resources surveys; identifying the extent of jurisdictional wetlands/waters of the U.S. per Corps Manual and jurisdictional areas per California Department of Fish and Game (CDFG) criteria; establishing appropriate mitigation utilizing statutory and industry standard methods of assigning mitigation ratios for impacts to riparian systems; identifying, evaluating and developing mitigation and monitoring plans for impacted waters and wetlands; preparing appropriate state and federal regulatory permit/agreement applications or notices; and completing initial studies and subsequent environmental documentation in compliance with the California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA).

**A. Biological Resources Surveys**



1. A/E shall perform biological resources surveys to a level adequate to obtain various environmental regulatory permits/agreements which may include, but not be limited to: Clean Water Act (CWA) Section 10 and/or 404 individual permits or CWA 33 CFR 330 nationwide permits from the U.S Army Corps of Engineers; Section 7 Consultations per the Federal Endangered Species Act (ESA); Incidental Take Permits and/or Habitat Conservation Plans under Section 10 of the ESA; Section 1600 Streambed Alteration Agreements from the California Department of Fish and Game (CDFG); California Endangered Species Act (CESA), Section 2081 (b) and (c) Incidental Take and Section 2080.1 Consistency Determinations/Certifications; CWA Section 401 discharge permit from the Regional Water Quality Control Board; Federal Coastal Zone Management Act (CZMA) Certifications and Coastal Development Permitting (CDP) approval from the California Coastal Commission (CCC); and State Lands Commission (CSLC) and California Department of Parks and Recreation (CDP&R) encroachment permits.
  2. A/E shall identify all sensitive (state and/or federally-listed) plant and/or animal species. If sensitive species are identified that may be impacted, A/E shall assist in the development of a mitigation strategy for processing a Section 7 Consultation and obtaining a Biological Opinion from the U.S. Fish and Wildlife Service and Section 2080.1 Consistency Determination from CDFG if required.
  3. A/E shall provide both a quantitative and qualitative assessment of habitat values using industry standard methods of assigning values for Riparian systems.
- B. Preparation of environmental documentation in compliance with the CEQA and NEPA
1. A/E shall complete environmental checklist and associated initial study.
  2. A/E shall prepare appropriate CEQA/NEPA documentation including categorical exemptions (CE), Findings of No Significant Impacts (FONSI), Biological Assessments (BA), negative declarations (ND) or mitigated negative declarations (MND), including public posting and all documents necessary to certify CEQA/NEPA documentation.
  3. OCPW/Project Management Division (PMD) will serve as the “lead agency” for CEQA/NEPA compliance. PMD will make the environmental determination regarding the appropriateness of a BA, CE, FONSI, ND, or MND in satisfying the requirements of CEQA/NEPA.
- C. A/E shall prepare regulatory permit/agreement applications or notices as directed. These permits include but are not limited to:

Federal Regulatory Permits:

1. U.S. Army Corps of Engineers Section 404 permits, Section 10 permits under the Rivers and Harbors Act of 1899, Nationwide Permits under 33 CFR 330 of the CWA, and the preparation of any alternatives analysis required under Environmental Protection Agency (EPA) Section 404(b)(1) Guidelines including

assistance and guidance in determining the Least Environmentally Damaging Practicable Alternative (LEDPA).

2. U.S. Fish and Wildlife Service ESA Section 7 consultation for 404 permits or development of an ESA Section 10 permit if requested.
3. Development of a Regional General Permit, if required

State Regulatory Permits and/or Agreements:

1. California Regional Water Quality Control Board (CRWQCB) Section 401 certification;
2. California Department of Fish and Game Streambed Alteration Agreement;
3. California Coastal Commission Coastal Development Permit
4. CESA Section 2081 (b) and (c) Incidental Take or Section 2080.1 Consistency Determination
5. Environmental and biological assistance for CSLC and CDP&R encroachment permits

Local Permits:

1. Coastal development permits in cities with Local Coastal Plans approved by California Coastal Commission.
  2. Orange County Natural Community Conservation Planning/Habitat Conservation Plan (NCCP/HCP) compliance consistency with ESA Section 10 permit.
- D. A/E shall establish appropriate mitigation utilizing statutory and industry standard methods of assigning mitigation ratios for impacts to riparian systems and prepare habitat mitigation plans as necessary for each project.
- E. A/E shall assist in negotiations with the state and federal resource agencies as part of the Corps' pre-discharge notification process and other similar meetings.
- F. In conjunction with Biological Resources Survey, (III. A.), A/E shall prepare wetlands delineation of the waters of the United States and waters of the State of California. The delineation report shall be included as part of the permit application package. A/E shall also prepare special species status surveys as needed.
- G. A/E shall perform biological resources monitoring upon request by OCPW to ensure compliance with state and federal agency permit and/or agreement conditions. Work to be accomplished may or may not be in consultation with a COUNTY assigned Biological Resources Monitor.

- H. A/E shall coordinate and be available for meetings with OCPW staff and the regulatory agencies to respond to comments, discuss terms for mitigation or other project issues as needed.
- I. OCPW and A/E will meet in the field to determine the PROJECT's environmental parameters such as the probable extent of CEQA documentation, level of biological survey required and, if necessary, scope of required mitigation.
- J. A/E shall perform tasks other than those noted above that may be required to secure the required project regulatory permits.

## V. PROPOSALS

COUNTY shall contact A/E (telephone, e-mail, or schedule face-to-face meeting) to inform A/E of an upcoming project. A/E shall prepare a written detailed Scope of Work/Proposal, hereinafter referred to as PROPOSAL, for each project. The PROPOSAL shall be submitted by A/E to COUNTY within five (5) working days of COUNTY's verbal or e-mail request. The PROPOSAL shall include detailed and specific tasks to be performed and a detailed schedule for completion of each task. The method of payment shall be per time and materials basis with hourly rates per Exhibit B with a not to exceed amount per task and a total not to exceed amount. An attachment to the PROPOSAL will be an excel spreadsheet displaying each task, the job classification of the staff working on each task for the project, anticipated number of hours worked per task per job classification, not to exceed amount per task and a total not to exceed amount. The PROPOSAL, at the end of the document, shall include signature blocks for a principal of A/E firm and the DIRECTOR. After COUNTY and A/E are in agreement and both parties have signed the PROPOSAL, COUNTY will issue A/E a written Notice to Proceed signed by the DIRECTOR.

## VI. A/E COMPENSATION

### A. Project Tasks

As stated in Section V above, the method of payment shall be per a time and materials basis with a total not-to-exceed amount per task. Per COUNTY statutory limitations, A/E cannot and will not be reimbursed for any work initiated or completed prior to receipt of written Notice-to-Proceed by the DIRECTOR. A/E must submit billing rates for all employees based on the Fee Schedule in the Board of Supervisors' approved AGREEMENT (Exhibit "B"). Total amount invoiced by A/E shall not exceed the amount specified per task. Task subtotal reallocations shall not be allowed without written approval of DIRECTOR.

A/E shall submit monthly invoices for services including those provided by others, if any. Total payment to A/E invoiced on a monthly basis shall not exceed the total authorized amount per task, **and in no event shall the cumulative amount paid for completion of all tasks exceed four hundred thousand dollars (\$400,000)** excluding extra work, unless approved in writing by COUNTY's Board of Supervisors. A/E's monthly

invoices shall be subject to COUNTY's approval in accordance with the PROPOSAL described in section V above.

A/E shall include with its monthly invoice, the title of the project, agreement number, COUNTY assigned work order number, total dollar cost of each task, dollar amount of invoice for each task, and remaining dollar amount of PROPOSAL. The invoice shall list each task, time spent on each task by each staff member by name and job classification and hourly rate, adding up to the amount invoiced per task and the total amount of the invoice. CONSULTANT shall also show on the invoice a complete accounting for Reimbursable items as described in the detailed scope of work/ PROPOSAL (see section V above).

Payment to A/E shall be within forty five (45) days of receipt by COUNTY of an approved invoice. Ten percent (10%) shall be withheld each month from the cumulative amount due to CONSULTANT on each separate item of work. Payment of the remaining ten percent (10%) on each separate item of work shall be made upon acceptance and approval of all items of work by the DIRECTOR.

B. Extra Work

Extra work not described in this AGREEMENT may be required. In the event COUNTY requires such work, additional compensation for this work shall be agreed upon in writing by A/E and COUNTY prior to commencing any work. The appropriate fee and performance of such work shall be authorized in writing by the DIRECTOR, and shall not exceed the amount authorized by the Board of Supervisors in Section J of this AGREEMENT.

In the event extra work is required, the schedule of fees included in the AGREEMENT as Exhibit B will determine the hourly pay rate for extra work.

C. Reimbursable Direct Costs

Reimbursable items of work/direct costs include non-salary expense items required to complete the tasks in the proposal. Reimbursable direct costs include the following:

1. Identifiable postage (large packages or express, overnight, or next day mail charges), other than for general correspondence, required in the performance of the work.
2. Identifiable printing or reproduction services, commercial printing and binding, and similar costs that are not applicable to general overhead required for the performance of the work.
3. Third-party services directly applicable to the work, such as: specialized engineering services which cannot be accomplished by the A/E or subcontracted under Section A, paragraph 3 of the AGREEMENT, special accounting expenses, special consultants, outside laboratory charges, and similar costs that are not applicable to general overhead. Compensation for this paragraph shall not exceed twenty percent (20%) of the total AGREEMENT not to exceed amount.

All work conducted by special consultants on behalf of A/E under this paragraph shall be considered as part of the forty nine percent (49%) allowable portion of the AGREEMENT that can be accomplished by sub-consultants per Paragraphs 3, 4, and 5 of the AGREEMENT.

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

4. Materials used for in-house testing, laboratory and field supplies.
  5. Permit fees, application fees, and filing fees. Permit, filing, and application fees shall not be considered as subject to a 10% service charge as allowed for in paragraph 7.
  6. Mileage and parking fees for field work and meetings outside Orange and Los Angeles Counties not to exceed a total of one thousand dollars (**\$1,000.00**) for the entire term of the AGREEMENT unless otherwise allowed for in writing by the DIRECTOR. Requests for an increase in disbursements under this reimbursable item of work must be approved prior to the start of work and the A/E's incurrence of such costs.
  7. Payment to A/E shall be conditioned upon approval by COUNTY staff and A/E providing an invoice with copies of the tickets, receipts, invoices, or other proof of payment by A/E. Payment to A/E for all Reimbursable Items of Work shall be actual invoice cost plus a ten percent (10%) service charge approved by COUNTY staff and shall **not exceed forty one thousand dollars (\$41,000.00) unless otherwise allowed for in writing by the DIRECTOR.**
  8. All costs associated with "Reimbursable Items of Work," shall be considered as included in (not in addition to) the total AGREEMENT not to exceed amount of four hundred thousand dollars (\$400,000), excluding extra work, as specified in Section VI.A. and no additional compensation will be allowed therefore.
- D. Items Not Considered Reimbursables Are As Follows:
1. Local hotel and meal expenses for the A/E's employees being utilized during the course of working on this project.
  2. Vehicle rental and equipment use and rentals.
  3. Computer Aided Drafting and Design, computerized engineering software and subsequent equipment operation related to the production of exhibits, reports, submittals and study documentation shall be considered included in the cost of general overhead and included in the hourly personnel rates for this project.
  4. General overhead costs such as accounting, computer rentals, and items generally required for the basic operations of daily business directly related to this project.

5. Standard plans, standard specifications, reference manuals, books, periodicals, or other written materials.
6. Local telephone, cellular telephone and FAX.

## **VII. COUNTY OR DISTRICT SUPPLIED ITEMS**

COUNTY shall provide to A/E the following if and/or when available. The detailed Scope of Work/Proposal should contain a more detailed listing of items to be provided by COUNTY.

1. Record Drawings,
2. Existing topographical survey provided by County Surveyor,
3. Geotechnical information on file at the COUNTY,
4. Utility information
5. Right of way maps
6. Agreements for right of way and utilities
7. Other cooperative agreements
8. Electronic file of OCPW CAD Manual, seed files, sheet borders, color tables, cells & resource files
9. Project description, mapping of the project limits, sketch of the proposed construction or maintenance work, project cost estimate and location map.



**Standard Rate Schedule  
OCPW Agreement No. D10-004**

<b><u>Professional Staff</u></b>	<b><u>Hourly Rate</u></b>
Principal .....	\$205.00
Project Director .....	\$190.00
Project Manager .....	\$171.00
Manager - Biological Resources .....	\$162.00
Senior Environmental Scientist/Engineer.....	\$158.00
Director of Operations .....	\$118.00
Senior Biologist/Monitor.....	\$105.00
Staff Biologist/Monitor.....	\$ 95.00
Biological Technicians .....	\$ 69.00
 <b><u>Revegetation Planning/Implementation</u></b>	
Revegetation Supervisor .....	\$ 64.00
Revegetation Crew .....	\$ 57.00
 <b><u>Archaeological/Paleo Monitoring</u></b>	
Principal Investigator .....	\$ 84.00
Field Director .....	\$ 76.00
Site Manager .....	\$ 68.00
Construction Monitor .....	\$ 63.00
 <b><u>Support Staff</u></b>	
Project Coordination .....	\$ 85.00
Graphic Illustrator/GIS Conformance .....	\$ 79.00
Word Processor .....	\$ 63.00
Clerical .....	\$ 53.00
Intern .....	\$ 48.00