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A G R E E M E N T

THIS AGREEMENT, hereinafter referred to as "AGREEMENT" for purposes of identification hereby numbered **OCP10-021** and dated _____ day of _____, 2010 is

BY AND BETWEEN

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

AND

Tait & Associates, Inc., 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 requires professional services to accomplish projects and/or services ("PROJECTS/SERVICES") as described in "County of Orange Scope Of Work for **On-Call Civil Engineering Services**," hereinafter referred to as "Exhibit A," attached hereto and incorporated herein by reference;

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 between the parties hereto as follows:

A. Retainer

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

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1 2. A professional, duly registered in the State of
2 California, who shall be assigned to PROJECTS/SERVICES and whose services
3 are offered by A/E and accepted by COUNTY is **Jacob Vandervis, P. E.**

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

11 a. **Lynn Capouya, Inc.** - *Landscape Architect*

12 b. **Southern California Geotechnical, Inc.** - *Geotechnical Engineer*

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

16 5. A/E's employment of independent consultants/contractors
17 shall not relieve A/E from the performance of its own responsibilities
18 pursuant to this AGREEMENT. However, all consultants/contractors
19 independently contracting with COUNTY shall be independently liable to
20 COUNTY for the performance of the work pursuant to their agreements, and A/E
21 shall have no liability for work by contractors independently contracting
22 with COUNTY.

23 **B. PROJECTS/SERVICES**

24 1. Description of PROJECTS/SERVICES

25 a. PROJECT/SERVICES to be performed by A/E shall consist of
26 the work as specified herein and as required in Exhibit A. If in the event

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1 Exhibit A shall be in conflict with any provision of this AGREEMENT, the
2 wording as set forth in Exhibit A shall prevail.

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

8 2. Design Criteria and Standards

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

11 3. Scheduling

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

20 b. A/E shall allow at least three (3) working days for COUNTY
21 review of progress work schedule. In planning work A/E should anticipate and allow
22 ten (10) working days for COUNTY review of each submittal required in Exhibit A.

23 c. A/E shall meet on an "as-needed" basis as determined
24 by DIRECTOR to review progress of work, adherence to progress schedule,
25 coordination of work, scheduling of seminars, if needed, and to resolve any
26 problems that may develop.

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

4 e. A/E shall complete all the work of PROJECTS/SERVICES
5 and obtain all approvals by the COUNTY within the time frame indicated in
6 Exhibit A except A/E shall not be responsible for any delay beyond the
7 control of A/E.

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

C. Assistance by COUNTY

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

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

D. Non-Employment of COUNTY Personnel

23 ~~A/E agrees that no employee of COUNTY, including but not limited to~~
24 ~~those who may be involved in this PROJECT shall be given or offered~~
25
26

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1 ~~employment by A/E during the life of this AGREEMENT regardless of the~~
2 ~~assignments said employee may be given or the days or hours employee may~~
3 ~~work.~~ 1. A/E agrees that no full-time, regular employee of COUNTY, as

4 applicable, who is involved in this Project, shall be given or offered
5 employment by A/E in a participatory status during the life of this
6 AGREEMENT regardless of the assignments said employee may be given or the
7 days or hours employee may work. By accepting this AGREEMENT, A/E agrees
8 not to negotiate any employment opportunity with any COUNTY full-time, as
9 applicable, regular employee who is involved in this Project in professional
10 classifications of the same skills required for the performance of this
11 AGREEMENT.

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

E. Non-Discrimination

21
22 1. In the performance of this AGREEMENT, A/E agrees that it
23 will comply with the requirements of the California Labor Code and not
24 engage nor permit any subcontractors to engage in discrimination in
25 employment of persons because of the race, religious creed, color, national
26 origin, ancestry, physical disability, mental disability, medical condition,

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1 marital status, or sex of such persons.

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

5 **F. Employee Eligibility Verification**

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

17 2. A/E shall indemnify, defend with counsel approved in
18 writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and
19 employees from employer sanctions and any other liability which may be
20 assessed against A/E or the COUNTY or both in connection with any alleged
21 violation of any Federal or State statutes or regulations pertaining to the
22 eligibility for employment of any persons performing work under this
23 AGREEMENT.

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

25 1. If A/E breaches any of the covenants or conditions of this
26 AGREEMENT, COUNTY shall have the right to terminate this AGREEMENT upon ten

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1 (10) days written notice prior to the effective day of termination.

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

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

8 **H. Termination for Convenience**

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

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

18 3. COUNTY shall pay the A/E for the Work completed prior to
19 the effective date of the termination, and such payment shall be the A/E's
20 sole remedy under this AGREEMENT.

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

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

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1 in any lower tier subcontracts.

2 **I. Term and ~~Maximum Compensation~~ Extension of Agreement**

3 The term of this AGREEMENT is for ~~three (3)~~ five (5) ~~six (6)~~ years
4 commencing on the date of execution by the Board of Supervisors, with a
5 maximum allowable compensation of four-hundred seventy-six thousand five
6 hundred dollars (~~\$400,000~~ \$476,500). Except as permitted in Paragraphs J G
7 and H, the term expiration date shall be July 19, 2015- 2016.

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

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

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

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

20 a. The amount for Extra Work shall be determined using
21 Exhibit B. Extra Work shall be required by and ordered in writing by
22 DIRECTOR. DIRECTOR may order Extra Work not to exceed five thousand dollars
23 (\$5,000) for contracts of less than fifty thousand (\$50,000), and may order
24 Extra Work up to ten percent (10%) for contracts not exceeding two hundred
25 fifty thousand dollars (\$250,000). For contracts greater than two hundred
26 fifty thousand dollars (\$250,000), Extra Work shall not exceed twenty-five

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1 thousand dollars (\$25,000) plus one percent (1%) of the original contract
2 amount in excess of two hundred fifty thousand dollars (\$250,000). In no
3 case shall Extra Work exceed one hundred thousand dollars (\$100,000).

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

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

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

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

20 **K. Laws to be Observed**

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

24 **L. Errors and Omissions**

25 1. All PROJECTS/SERVICES submitted by A/E shall be complete
26 and shall be carefully checked prior to submission. A/E understands that

1 COUNTY'S checking is discretionary, and A/E shall not assume that COUNTY
2 will discover errors and/or omissions. If COUNTY discovers any errors or
3 omissions prior to approving A/E's PROJECTS/SERVICES, the PROJECTS/SERVICES
4 will be returned to A/E for correction. Should COUNTY or others discover
5 errors or omissions in the work submitted by A/E after COUNTY'S approval
6 thereof, COUNTY'S approval of A/E'S PROJECTS/SERVICES shall not be used as a
7 defense by A/E.

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

16 **M. Insurance**

17 1. A/E shall maintain insurance coverage appropriate to protect
18 against all risks arising from or in any way connected with the subject
19 matters of this AGREEMENT, acceptable to COUNTY, effective on the first day
20 of work and in full force throughout the full term of this AGREEMENT.

21 2. A/E agrees to deposit with COUNTY, within fourteen (14)
22 calendar days of the date of execution of this AGREEMENT at 13042 Old Myford
23 Road, Irvine, CA 92602, certificates of insurance and endorsements
24 (certificates shall be in a form obtainable from COUNTY), in duplicate to
25 satisfy COUNTY, that insurance requirements of this AGREEMENT have been
26 complied with and to keep such insurance in effect and the certificates

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1 therefore on deposit with COUNTY, during the entire term of this AGREEMENT.

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

4 4. COUNTY, shall retain the right to review the coverage,
5 form, and amount of the insurance provided by A/E prior to the start of work
6 on PROJECTS/SERVICES by A/E. If, in the opinion of DIRECTOR, the
7 certificates and endorsements provided by A/E do not provide the coverage,
8 form, and amount of insurance as required and listed herein, COUNTY, shall
9 notify A/E in writing that A/E is in default of the AGREEMENT. A/E shall
10 have fourteen (14) calendar days from the date of such notification from
11 COUNTY to provide adequate insurance. If A/E fails to provide adequate
12 insurance within the time frame specified, COUNTY, shall terminate the
13 AGREEMENT without compensation to A/E.

14 5. COUNTY, shall retain the right at any time to review the
15 coverage, form, and amount of the insurance required hereby. If, in the
16 opinion of DIRECTOR, the insurance provisions as described in this AGREEMENT
17 do not provide adequate protection for COUNTY, COUNTY may require A/E to
18 obtain insurance sufficient in coverage, form, and amount to provide
19 adequate protection. COUNTY's requirements shall be reasonable but shall be
20 designed to assure protection from and against the kind and extent of the
21 risks which exist at the time a change in insurance is required.

22 6. The costs of such changes in insurance during the course of
23 work as may be requested by COUNTY shall be paid by COUNTY, to A/E as either
24 Extra Work, as described in paragraph J of this AGREEMENT, or as an
25 amendment to the AGREEMENT.

26 7. COUNTY shall notify A/E in writing of changes in the

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1 insurance requirements; and if A/E does not deposit copies of acceptable
2 certificates and endorsements with COUNTY incorporating such changes within
3 fourteen days of receipt of such notices, this AGREEMENT shall be in default
4 without further notice to A/E, and COUNTY, shall be entitled to all legal
5 remedies.

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

9 9. All insurance policies required by this AGREEMENT shall
10 declare any deductible or self-insured retention (SIR) in an amount in
11 excess of twenty-five thousand dollars (\$25,000) [Five thousand dollars
12 (\$5,000) for automobile liability], which shall specifically be approved by
13 the County Executive Office (CEO)/Office of Risk Management. A/E shall be
14 responsible of any deductible to the insurer. Any self-insured retentions
15 (SIRs) or deductibles shall be clearly stated on the Certificate of
16 Insurance.

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

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

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

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1 ratings.

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

4 <u>Coverage</u>	<u>Minimum Limit</u>
5 Workers' Compensation	Statutory
6 Employer's Liability	\$1,000,000 per occurrence
7	\$2,000,000 aggregate
8 Commercial General Liability with broad form and contractual 9 liability	\$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate
10 Auto Liability including coverage for owned, non-owned and hired 11 vehicles	\$1,000,000 combined single limit per occurrence
12 Professional Liability (Errors and Omissions)	\$1,000,000 claims made

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

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

22 b. A clause stating, "This insurance shall not be
23 cancelled, reduced in scope or coverage, changed or amended until after
24 thirty (30) days written notice has been given to: DIRECTOR, Orange County
25 Parks, at 13042 Old Myford Road, Irvine, CA 92602; and, Orange County Risk
26

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1 Management Services, P.O. Box 327, Santa Ana, CA 92702." This shall be
2 evidenced by an endorsement separate from the Certificate of Insurance. In
3 addition, the cancellation clause must include language as follows, which
4 edits the pre-printed ACCORD certificate:

5 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED
6 BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY
7 WILL ~~ENDEAVOR TO~~ MAIL 30 DAYS WRITTEN NOTICE TO THE
8 CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT FAILURE~~
9 ~~TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR~~
10 ~~LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR~~
11 ~~REPRESENTATIVE.~~

12 c. A clause stating, "This insurance shall be primary
13 insurance and any insurance maintained by the 'County of Orange' shall be
14 excess and non-contributing."

15 d. A clause stating, "The following party is hereby named
16 as additional insured: 'County of Orange' (for Commercial General Liability
17 and Auto Liability only)."

18 e. A clause stating, "This insurance shall allow for
19 severability of interest of the: 'County of Orange'."

20 f. A clause stating, "Workers' Compensation insurance
21 shall waive all rights of subrogation against the 'County of Orange'."

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

N. Indemnification

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

14 **O. Award of Construction Agreement and Other Future Agreements**

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

25 **P. Amendments**

26 No alteration or variation of the terms of this AGREEMENT shall

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1 be valid unless made in writing and signed by the parties; no oral
2 understanding or agreement not incorporated herein shall be binding on
3 either of the parties; and no exceptions, alternatives, substitutes or
4 revisions are valid or binding on COUNTY unless authorized by COUNTY in
5 writing.

6 **Q. Successors and Assigns**

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

10 **R. Entirety**

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

13 **S. Severability**

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

18 **T. Binding Obligation**

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

23 **U. Governing Law and Venue**

24 1. This AGREEMENT has been negotiated and executed in the
25 State of California and shall be governed by and construed under the
26 laws of the State of California. In the event of any legal action to

1 enforce or interpret this AGREEMENT, the sole and exclusive venue
2 shall be a court of competent jurisdiction located in Orange County,
3 California, and the PARTIES hereto agree to and do hereby submit to
4 the jurisdiction of such court, notwithstanding Code of Civil
5 Procedure, Section 394.

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

12 **V. Child Support Enforcement Requirements**

13 1. To comply with child support enforcement requirements of
14 the COUNTY, within thirty (30) days of notification of selection for award
15 of PROJECTS/SERVICES, A/E agrees to complete and furnish to DIRECTOR the
16 information required in County of Orange Child Support Enforcement Contract
17 Certification, hereinafter referred to as "Exhibit C," attached hereto and
18 incorporated herein by reference.

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

25 3. It is expressly understood that this data will be
26 transmitted by COUNTY to governmental agencies charged with the

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1 establishment and enforcement of child support orders and for no other
2 purposes.

3 **W. Ownership of Documents**

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

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

17 **X. Confidentiality**

18 1. All ideas, memoranda, specifications, plans, procedures,
19 drawings, descriptions, and all written or other information submitted to
20 A/E in connection with the performance of this AGREEMENT shall be held
21 confidential by A/E and/or anyone acting under the supervision of A/E and
22 shall not, without the prior written consent of COUNTY, be used for any
23 purposes other than the performance of the PROJECTS/SERVICES described in
24 Exhibit A, nor be disclosed to any person, partnership, company,
25 corporation or agency, not connected with the performance of the
26 PROJECTS/SERVICES. 2. Nothing furnished to A/E which is generally

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1 known among counties in Southern California shall be deemed confidential.

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

6 **Y. Publication**

7 1. No copies, sketches or graphs, including graphic art work,
8 resulting from performance or prepared in connection with the
9 PROJECTS/SERVICES, are to be released by A/E and/or anyone acting under the
10 supervision of A/E to any person, partnership, company, corporation, or
11 agency, without prior written approval by COUNTY, except as necessary for
12 the performance of the PROJECTS/SERVICES.

13 2. All press releases, including graphic display information
14 to be published in newspapers, magazines, etc., are to be administered only
15 by COUNTY unless otherwise agreed to in writing by both parties.

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

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

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

24 3. A/E shall keep such material, including all pertinent cost
25 accounting, financial records and proprietary data for a period of three (3)
26 years after termination or completion of the AGREEMENT or until resolution

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1 of any claim or dispute between the PARTIES, whichever is later.

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

7 **AA. Notices**

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

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

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

23 For A/E:

24 Name: **Tait & Associates, Inc.**
25 Address 701 N. Parkcenter Drive
26 City Santa Ana, CA 92705
Attn: Jacob Vandervis P.E., Vice President
Phone: 714-560-8677
E-mail: jacobv@tait.com

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Fax: 714-560-8211

For COUNTY:

Name: County of Orange/OC Parks Design
Address 13042 Old Myford Road
City Irvine, CA 92602
Attn: Scott Thomas, Manager
Phone: (949) 923-3757
E-mail: Scott.Thomas@ocparks.com
Fax: (714) 973-3338

AB. Attorney's Fees

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

AC. Interpretation

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

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

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

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

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

3 **AD. Headings**

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

8 **AE. Acceptance**

9 Unless otherwise agreed to in writing by COUNTY acceptance shall
10 not be deemed complete unless in writing and until all the services have
11 actually been received, inspected, and tested to the satisfaction of COUNTY.

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

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

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

19 **AG. Remedies Not Exclusive**

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

25 **AH. Independent Contractor**

26 1. A/E shall be considered an independent contractor and

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1 neither A/E, its employees, nor anyone working under A/E shall be considered
2 an agent or an employee of COUNTY.

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

AI. Bills and Liens

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

AJ. Changes

13 A/E shall make no changes in the work or perform any additional
14 work without the COUNTY'S specific written approval.

AK. Assignment

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

STRIKETHROUGH**AL. Changes in Ownership**

1 **AL. Changes in Ownership**
2 A/E agrees that if there is a change or transfer in ownership,
3 including but not limited to merger by acquisition, of A/E's business prior
4 to completion of this AGREEMENT, the new owners shall be required under
5 terms of sale or other transfer to assume A/E's duties and obligations
6 contained in this AGREEMENT and to obtain the written approval of COUNTY of
7 such merger or acquisition, and complete the obligations and duties
8 contained in the AGREEMENT to the satisfaction of COUNTY.

AM. Force Majeure

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

AN. Compliance with Laws

17 **AN. Compliance with Laws**
18 1. A/E represents and agrees that services to be provided
19 under this AGREEMENT shall fully comply, at A/E's expense, with all
20 standards, laws, statutes, restrictions, ordinances, requirements, and
21 regulations (collectively "laws"), including, but not limited to those
22 issued by COUNTY in its governmental capacity and all other laws applicable
23 to the PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and
24 accepted by COUNTY.

25 2. A/E acknowledges that COUNTY is relying on A/E for such
26 compliance, and pursuant to the requirements of the indemnification

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1 paragraph above, A/E agrees that it shall defend, indemnify and hold COUNTY
2 and COUNTY INDEMNITEES harmless from all liability, damages, costs and
3 expenses arising from or related to a violation of such laws.

AO. Calendar Days

4
5 Any reference to the word "day" or "days" herein means calendar
6 day or calendar days, respectively, unless otherwise expressly provided.

AP. Breach of Contract

7
8 The failure of the A/E to comply with any of the provisions,
9 covenants or conditions of this AGREEMENT shall be a material breach of this
10 AGREEMENT. In such event, in addition to any other remedies available at
11 law, in equity, or otherwise specified in this AGREEMENT, the COUNTY may:

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

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

17 3. offset those monies disallowed pursuant to the above,
18 against any monies billed by the A/E but yet unpaid by the COUNTY.

AQ. Default

19
20 1. In the event any equipment or service furnished by the A/E
21 in the performance of this AGREEMENT should fail to conform to the
22 specifications therein within one (1) calendar year from the COUNTY'S
23 acceptance of the equipment or service, or any performance period
24 specifically specified within the specifications or AGREEMENT, whichever is
25 greater, the COUNTY may reject same, and it shall become the duty of the A/E
26 to reclaim and remove the items without expense to the COUNTY and to

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1 immediately replace all such rejected equipment or service with others
2 conforming to such specifications, provided that should the A/E fail,
3 neglect or refuse to do so within one hundred and twenty (120) calendar
4 days, the COUNTY shall have the right to purchase on the open market a
5 corresponding quantity of any such equipment or service and to deduct from
6 any monies due or that may thereafter become due to the A/E the difference
7 between the price specified in this AGREEMENT and the actual cost to the
8 COUNTY.

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

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

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

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

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

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

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

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

15 **AS. Title to Data**

16 1. All materials, documents, data or information obtained from
17 the COUNTY data files or any COUNTY medium furnished to the A/E in the
18 performance of this AGREEMENT, will at all times remain the property of the
19 COUNTY. Such data or information may not be used or copied for direct or
20 indirect use by the A/E after completion or termination of this AGREEMENT
21 without the express written consent of the COUNTY.

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

26 **AT. Availability of Funds**

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

AU. Contract Construction

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

AV. Waiver of Jury Trial

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

23 ///

24 ///

