

A-E AGREEMENT

PROJECT TITLE: Environmental Multi-Discipline Engineering Support  
Services for OC Waste & Recycling

This aggregate Agreement #MA-299-13010709, hereinafter referred to as "Agreement," for OC Waste & Recycling Environmental Services Section is hereby entered into this *11* day of *December* 2012, hereinafter referred to as "Execution Date," and is by and between the County of Orange, OC Waste & Recycling, a political subdivision of the State of California, hereinafter referred to as "County," and **Advanced Earth Sciences, Inc.**, a licensed professional Architect-Engineering firm of the State of California, hereinafter referred to as "A-E," with a principal office located at 9307 Research Drive, Irvine, CA 92618.

RECITALS

WHEREAS, County desires to contract for Environmental Multi-Discipline Engineering Support Services for OC Waste & Recycling Environmental Services Section, as more fully described in Exhibit A, Scope of Services, attached and incorporated herein, hereinafter called "Services" for such term as is defined herein; and

WHEREAS, County desires to award an aggregate Agreement to two (2) A-E firms, one of which is Advanced Earth Sciences, Inc. (AES), and the other of which is Geosyntec Consultants, a licensed professional Architect/Engineering firm of the State of California, with each separate agreement containing identical terms, to perform services consistent with these A/E Agreement terms and conditions; and

WHEREAS, A-E is qualified and willing to render the Services desired by the County;

NOW, THEREFORE, for and in consideration of the professional services and mutual promises to be performed for the County by the A-E in connection with the Services and the compensation to be paid for such Services and mutual promises by the County, all as herein provided, the County and A-E agree as follows:

1. **Retainer**

a. County does hereby retain A-E to perform the Services as hereinafter specified.

b. A-E is an engineering firm and will perform the Services provided for herein in association with the following Team Members: Shaw Environmental, AMEX, Simplus Management, Dave Woolley & Associates, and Robert Lung & Associates. A-E and the principals of the Team Members are duly registered under the laws of the State of California.

A-E Principals assigned to perform the Services under this Agreement are:

Kris Khilnani	Principal in Charge (AES)
Suji Somasundaram	Principal Engineer (AES)
Len Yamamoto	Engineering Manager (Shaw Environmental)
Tim Simpson	Principal Engineer (AMEC)
Paul Buckley	Construction Manager (Simplus Management)
David Woolley	Professional Land Surveyor (D. Woolley & Assoc.)

Other key professionals assigned by A-E to the Services and their respective assignments have been approved by County and are shown in Exhibit B. During the term of this Agreement, neither A-E, nor Team Members will substitute others for the named key professionals approved by County without written approval of the Director, or designee (the “Director”) of OC Waste & Recycling. If a designated professional fails to perform satisfactorily, upon written notice from OC Waste & Recycling, A-E shall remove that person from the Task and replace that person with one acceptable to OC Waste & Recycling.

For the purposes of this Agreement, “Team Members” shall mean independent A-E, whether individuals or companies, hired directly by A-E to assist in the performance of any and/or all aspects of the Services under this Agreement. Team Members listed above may only be substituted by mutual agreement of A-E and the Director. Nothing contained in this Agreement shall create any contractual relations between County and any Team Member employed by A-E in connection with the Services.

A-E shall be fully responsible and liable for the work of its employees, all Team Members and sub-contractors of A-E performing Services under this Agreement. All references to A-E responsibilities and duties under this Agreement shall be deemed a reference to Team Members and sub-contractors. A-E shall ensure that all Team Members and sub-contractors are aware of the terms of this Agreement and comply fully with all such terms. A-E shall have no liability for work by A-E independently contracting with County, except insofar as such liability arises due to A-E’s performance of Services under this Agreement.

A-E and its Team Members shall exercise that degree of skill and diligence normally employed by professional engineers or A-E performing the same or similar services. A-E shall be given a reasonable period in which to re-perform, without additional compensation, any services not meeting this standard, after which time County may, at its option, claim damages for breach of this Agreement for any services rendered by the A-E which do not meet the standard.

c. Prohibition against Subcontracting or Assignment

The experience, knowledge, capability, and reputation of the A-E, its principals and employees were the substantial inducement for the County to enter into this Agreement. Therefore, other than the Team Members specified herein, the A-E shall not contract with any other person or entity to perform in whole or in part the Services required hereunder without the express written approval of the Director. In addition, neither this Agreement, any portion thereof nor any interest herein may be

transferred, assigned, conveyed, hypothecated, delegated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the County.

Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of A-E, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceedings, this Agreement shall be void. No approved transfer shall release the A-E or any surety of A-E of any liability hereunder without the express consent of the County.

**2. Services**

a. Description of Services

The scope of services under this Agreement is those specified in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference. Individual Services performed under this Agreement shall be completed in accordance with a Task Order issued by the Director, as fully expressed in the Scope of Services. Final invoicing must be received within 60 days upon completion of final task.

The County has approved and authorized two A-E firms to do the work subject to this Agreement, for its entire term. For designated tasks, the County may issue task order(s) to request proposals from both primary firms who have been approved for these on-call A-E services, and shall reserve the right to award the specific task to one firm or the other, or to apportion the work in any manner. The proposed scope of the work that is deemed to be in the best interest of the County will be the primary consideration in authorizing the work and not based on a cost factor.

b. Project Criteria and Standards

Services performed hereunder, including, but not limited to the services of A-E and Team Members, shall be performed with that degree of skill, care, diligence and generally accepted professional standards as practiced by similarly situated architectural, mechanical, electrical, structural and civil services firms, and as expeditiously as is consistent with professional skill, diligence and care and the orderly progress of the services. All work, of any kind, shall conform to and be in compliance with all applicable codes, laws, ordinances, regulations, and restrictions. Except as otherwise expressly provided herein, A-E shall (1) furnish all labor, supervision, equipment, tools, testing devices, provide all of the consumable materials, and each and every item of expense specified herein required to complete the services as specified in Exhibit A, Scope of Services; (2) perform all services with promptness and diligence so that the work may commence and may be completed in a timely manner; (3) properly perform all Services specified herein; and (4) have full control and direction over the mode and manner of performing the Services covered by this Agreement. All professional Services herein specified are to be performed wholly at the risk of the A-E, and the A-E shall take all precautions for the proper and safe performance thereof. Nothing in this Agreement shall be construed to be an assumption of responsibility by A-E for any pre-existing site condition.

All work shall be performed in accordance with the most current criteria and standards, which may include, but are not limited to:

- Public Contract Code of the State of California
  - Resource Conservation and Recovery Act, Subtitle D
  - California Code of Regulations Title 27 Environmental Protection--Division 2, Solid Waste
  - California Code of Regulations Title 24, California Building Standards Code
  - South Coast Air Quality Management District Rules
  - OC Public Works Standard Plans
  - Orange County Grading Manual and Excavation Code
  - OC Waste & Recycling Regulatory Compliance Requirements (refer to Exhibit F)
  - Others may include: APWA Standard Specifications, Waste Discharge Requirements and California Environmental Quality Act, as well as instructions set forth by the Director of OC Waste & Recycling or designee.
- c. Safety and Health Laws and Regulations

As appropriate, A-E shall prepare a Health and Safety Plan (H&SP) in compliance with all local, municipal, State, and Federal health and safety laws, orders, and regulations applicable to A-E's operations in the performance of the Services. While on the premises of County, A-E and A-E's employees, Team Members, and agents shall comply with applicable requirements of the Occupational Safety and Health Act and any State-approved plan, and the regulations there under, to the extent applicable and shall ensure that all A-E's employees, Team Members, and agents have a safe place of work on the premises of County.

The H&SP shall be submitted to County within ten (10) calendar days after the effective Agreement date. The Notice to Proceed with any Task Order under this Agreement will be contingent upon receipt of an H&SP acceptable to County's OC Waste & Recycling Safety Officer or designee. It is County's intention to return its comments within ten (10) calendar days after receipt of the H&SP.

A-E shall be solely and completely responsible for conditions including safety of all persons and property during the performance of the Services. County's acceptance/concurrence of A-E's H&SP does not relieve or transfer any such responsibilities to County.

d. Laws to be Observed

In addition to those specified or referred to above or otherwise herein, A-E shall be familiar with and, at all times, observe and comply with but not limited to the jurisdiction of the County of Orange, Local Enforcement Agency, Regional Water Quality Control Board, South Coast Air Quality Management District, and all Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of its performance of this Agreement.

e. Scheduling, Coordination, and Reporting

A-E shall be responsible for preparing documents as outlined in Exhibit A. This includes negotiating with other public agencies and private parties and performing miscellaneous items in connection with the Services specified within this Agreement.

A-E shall allow at least ten (10) working days after submittal of deliverables for County review. In planning work, A-E should anticipate and allow for said County review of each submittal required in Exhibit A. A-E shall meet with County's staff, when required, to review progress of work, adherence to progress schedule, coordination of work, scheduling of presentations or coordination meetings, if needed, and to resolve any problems that may develop.

The A-E shall be responsible for providing written minutes of all Project Meetings attended by the A-E or its designee and County representatives. A copy of the minutes shall be sent to the County Contract Administrator or designee for concurrence within three (3) working days of each meeting.

A-E shall submit a progress report of each month's activities by the Wednesday of the third week of the following month to County's OC Waste & Recycling. Each monthly progress report shall be a concise summary of Services information and data prepared for the use of County's OC Waste & Recycling project management personnel. A-E shall complete all authorized Tasks, as outlined in the Scope of Services and obtain all approvals of County as stipulated in the deliverable plan and agreed upon herein. The progress report shall include the following items as appropriate and as directed by the Scope of Services:

- Narrative Summary
  - Highlights
  - Major decisions
  - Major activities
  - Milestones reached on each task
  - Progress achieved compared to planned progress
- Areas of concern and corrective action taken or planned
- Overall A-E project progress
- Overall progress of procurement package preparation (if any)
- Overall progress of work being managed by A-E (if any)
- Revisions to Scope of Services as necessary to address change orders, delays and actual expenditures.

In the event A-E fails to complete the work in a timely and professional manner, County shall have the option of completing the work with its own force or under agreement with another firm. The time allowed for A-E to complete the work pursuant to this Agreement or the applicable Task Order maybe extended by the Director (for an additional period of time determined by the Director) for time delay created by job conditions or other conditions without fault or negligence of the A-E.

All extra work resulting in an increase in the Contract total ceiling amount shall be authorized by written amendment to this Contract. Said modification shall be issued by the County of Orange,

Purchasing Agent or his designee and maybe subject to approval by the Orange County Board of Supervisors.

f. Presentations

When public presentations are called for, OC Waste & Recycling staff will schedule and/or arrange for such presentations and will provide introduction and assistance. A-E shall be called upon to present public presentation, be responsible for preparation of exhibits and visual aids for oral presentation. Any recommendations to be made in the presentation shall have prior concurrence of OC Waste & Recycling staff.

g. Approvals of Other Agencies and Entities

A-E shall assist OC Waste & Recycling to complete the review process with the appropriate local jurisdictions and obtain on OC Waste & Recycling' behalf, all regulatory agencies' approval, and as necessary, to interact with concerned responsible entities.

h. Ownership of Documents, Equipment and Materials

All test data, survey results, computer database, models and renderings such as drawings, designs, specifications and other incidental architectural and engineering work, documentation, equipment, or materials prepared by the A-E in connection with the performance of Services furnished hereunder shall be and remain the property of County, including all copyrights, rights of reproduction and other interests relating thereto, shall be surrendered to County upon request of OC Waste & Recycling at any time, or may be used by County, as County may require, without any additional cost to County.

A-E hereby assigns to the County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, and rights to ideas in and to all versions of the plans and specifications now or later prepared by A-E in connection with any Services provided under this Agreement. The A-E agrees to refrain from taking any actions, which would impair said rights. The County may reuse such documents for future work of any project wherein A-E provided Services under this Agreement and for future projects provided that the A-E has been fully compensated for the Services performed according to the terms of this Agreement and, with respect to future projects, provided the A-E is indemnified against any liability that may occur as a result of such reuse. The County shall not refer to the A-E without its consent in any published materials referring to such other projects and it shall not permit parties other than the County to use such work.

i. Final Mapping.

A-E shall deliver the final mapping in digital format conforming to the latest AutoCAD version being used by OC Waste & Recycling or in a version as specified by OC Waste & Recycling. The digital mapping will be placed on CD-ROM utilizing a .DWG file format for use in the latest version of Land Development Desktop software used by OC Waste & Recycling or in a version as specified by the department. Contours shall be AECC Contours. A-E shall use AutoCAD layering specified line type,

and the layer description to be implemented and adhered to for all photogrammetric and topographic digital files. Contact OC Waste & Recycling for layer specifications.

j. Reproduction

County will be responsible for all reproduction necessary for advertising for bids and for Agreement administration. A-E shall be responsible for reproductions necessary for submittals as described in this Agreement.

**3. Access to Facilities and Property**

County will make its facilities reasonably accessible to A-E as required for A-E's performance of its Services. A-E shall notify OC Waste & Recycling prior to accessing County's facilities and property.

**4. Compensation of A-E**

A-E will be compensated for all authorized services performed under this Agreement in accordance with Exhibit C hereto. Exhibit C includes full compensation for providing all services performed provided under this Agreement. All invoicing and payment for Services performed under this Agreement shall be as specified in Exhibit C.

For the Services properly authorized and performed by A-E and approved Team Members under this Agreement, A-E shall be compensated in accordance with the following:

a. Time and Expenses Basis

For completion and approval of all work for a Task Order, compensation shall be on a time and expenses basis. The hourly rates listed herein shall be effective from the Effective Date of this Agreement through the termination of this Agreement.

b. Lump Sum Basis

Lump Sum basis Task Orders are required to have written approval by the PM prior to the A-E proceeding with the services. Prior to the services commencing the A-E shall provide the PM with a detailed breakdown of the labor and materials costs that determined their lump sum quote. The breakdown shall be in accordance with the hourly rate schedules listed herein. Costs not contained in the hourly rate schedules shall be reviewed by the PM for reasonableness as part of the written approval process. All Lump Sum quotes for Task Orders shall be executed and processed as described herein.

In the event of unforeseen circumstances occurring that would necessitate a modification to the authorized Lump Sum Task Order; a separate Task Order authorization may be requested by the A-E to reflect the changes in the scope of services.

Upon completion of the Lump Sum Task Order, the A-E shall submit to the PM a billing invoice for services rendered. The PM shall review and approve the invoice for payment by OC Waste & Recycling Accounting/Accounts Payable.

The A-E shall at all time during the term of the Lump Sum Task Order keep full and complete records and documentation in support of the services performed. The County shall have the right to request and examine any project records for the purpose of determining its accuracy in accordance with the terms and conditions of this Agreement.

c. Contract Maximum

The total Agreement amount shared between two A-E firms shall not exceed the aggregate amount of \$2,100,000, including reimbursable and other direct costs. Reimbursable costs shall be billed in accordance with Exhibit C, Schedule of Fees.

The total not-to-exceed compensation will be broken down into individual tasks that have yet to be determined. The amounts allocated for each task may be transferred and adjusted within these tasks with the written approval of the Director or designee.

It will be the sole responsibility of the PM to monitor, track, amend, and with Director approval, move the task dollars within the not-to-exceed budget of the total contract amount.

A-E shall submit a monthly accounting report to County's OC Waste & Recycling by Wednesday of the third week of the following month. The accounting report shall show the following information for each Task Order:

- Original Agreement Amount
- Revised Agreement Amount (original Agreement Amount plus fund transfers and amendments)
- Amount Expended to Date
- Amount Being Invoiced
- Total authorized Task Order Amount to date, and
- Amount pending completion of authorized Task Orders to date
- Contract and Encumbrance document numbers to be provided by the County

This report shall contain the total costs recorded to date on this Agreement and all Task Orders.

d. Change Orders or Amendment and Authority

Prior to performing work where changes in the work are requested for a Task Order, the changes shall be in writing and County shall have the authority to review and approve the changes in accordance with the following:



## **Attachment D**

- Approval by County's Board of Supervisors is required if (1) a change would exceed \$10,000 when the original contract amount does not exceed \$100,000, (2) a change would exceed 10-percent of the original contract amount, or 10-percent of the amended "not to exceed" amount, if applicable, as authorized by the Board of Supervisors when the original contract amount exceeds \$100,000, but does not exceed \$250,000, and (3) a change for any contract would exceed \$25,000 plus 1% of the original amount of the contract in excess of \$250,000, (or the full "not to exceed" amount as authorized by the Board of Supervisors) when the original contract amount exceeds \$250,000. In no instance shall the extra work cumulatively exceed \$100,000, unless authorized by the Board of Supervisors.
  - Changes, which do not exceed the limits, defined above and provided the additional work is conducted under the current terms and conditions of the contract may be authorized by the Director of OC Waste & Recycling.
- e. Compensation on Termination

Any compensation due A-E at termination, will be determined in accordance with Agreement Article. 8, Termination of Agreement.

### Other Contractual Requirements

- Labor Charges shall be charged on the basis of actual time spent at the job site/company office, computed to the nearest ¼ hour.
- Labor charges for time spent traveling from portal to portal shall be charged at 50 percent of the pertinent rate(s) established herein, and shall be computed to the nearest ¼ hour. Travel time is not to exceed 2 hours per day.
- Travel time to and from the job site shall not be included in the calculation of overtime. Overtime hours shall be calculated solely on the basis of working in excess of 8 hours a day at the job site and/or company office.
- At the start of any Task Order authorized under this Agreement, the A-E shall submit to the PM a list of employees who will work on the project and the job classification the employee is assigned.
- The A-E employee's job classification and charge (billing) rate once assigned shall remain fixed for the life of the contract, where the employee's hours worked may not be charged to a different charge (billing) rate, unless performing duties at a lower rate.

Notwithstanding any provision of this Agreement to the contrary, County's obligations under this Agreement is contingent upon the inclusion of sufficient funding for the services hereunder in the applicable County budget approved by the Board of Supervisors.

### Payments

## **Attachment D**

The cost for the work including the fees and reimbursable items will be billed monthly by the A-E to the County in congruence with the scheduled deliverable in each Task Order. Each invoice must show cost breakdown by task including the accumulated cost for the task as well as the new cost for the billing period. The cost breakdown by task for the various subcontracted items shall also be indicated. The A-E's billings shall also include, but not be limited to, classification of A-E's staff employed in the work, number of hours worked, and hourly rate. These invoices must be prepared in a manner that will allow easy cross-referencing to the reports required herein. Requests for payment must be mailed (on the approved form) to OC Waste & Recycling Accounting/Accounts Payable. The responsibility for providing acceptable invoices rests with the A-E. Final invoices must be received within 60 days upon completion of final task. Please note that the following information must be clearly referenced on the invoice if available:

- the A-E's vendor code and
- the Master Agreement (MA) number

A-E must promptly notify the County about any changes in Legal (Organization) Name, Tax ID and Address so that this information can be updated in the system to prevent a delay in payment.

Furthermore, sufficient itemization and/or description must appear on the invoice. Dollar amounts, extensions, and totals must be correct.

Invoices must be mailed to:

**OC Waste & Recycling**

300 N. Flower St., Ste. 400

Santa Ana, CA 92703-5000

Attn: Accounting/Accounts Payable

**Master Agreement Number: MA-299-13010709**

**Project Name: Environmental Multi-Discipline Engineering Support Services for  
OC Waste & Recycling Environmental Services Section**

### **5. Term of Agreement**

The term of this Agreement shall commence upon the date the Agreement is executed by the County (the "Effective Date") and, unless earlier terminated as provided for herein, shall be in full force and effect for ~~three~~ *four* (3) (4) years. All Task Orders must be issued and completed within the Agreement duration.

### **6. Authorization to Proceed**

A-E is not authorized to proceed with the Services prior to the Effective Date of this Agreement. In addition, A-E shall not perform any Services under this Agreement without the issuance of a notice to proceed and an authorized Task Order.

### **7. Suspension, Delay, or Interruption of Work**

The County, in its sole and absolute discretion, may, at any time, suspend, delay, interrupt, or stop the performance of any or all of the Task Orders, work or Services of this Agreement by written notice to the A-E for the convenience of County or for work stoppages beyond the control of the County, the A-E or other party.

If the Task Order(s), work or Services are suspended by the County for more than 90 calendar days, the A-E shall be paid compensation for services performed prior to receipt of the written notice of the suspension from the County, together with any reimbursable expenses then due, if applicable.

If an extension of the suspension of a Task Order, work or Services is necessary, the extension must be evidenced by written modification to the pertinent Task Order(s) issued by the County. If the Task is resumed after being suspended for more than six (6) months, the A-E shall have the option to require that its compensation for the applicable Task Order(s), including rates and fees, be renegotiated.

Subject to the provisions of this Agreement relating to termination, a suspension of a Task Order does not void this Agreement. The County's right to suspend Task Order(s) is in addition to and not in substitution for the County's right to terminate this Agreement, as stated below.

**8. Termination of Agreement**

a. Termination by County Due to A-E's Default

(1) Notice: If A-E defaults in the performance of any authorized Task Order, work, Services or any material obligation of A-E under this Agreement and fails to correct such default (or if immediate correction is not possible, fails (in the opinion of the Director) to undertake effective action to correct such default) within thirty (30) days following receipt of written notice thereof from County, County may, without prejudice to any other rights or remedies it may have, cause further payment to be held in abeyance and/or terminate this Agreement by written notice to A-E specifying the date of termination. In the event of such termination by County, County may take possession of the work (all plans, specifications, drawings, any and all materials and equipment, which County has paid for whether delivered to the job site or on order by A-E and other data theretofore prepared by A-E with respect to this Agreement) at the job site and A-E's place of business.

(2) Obligations: In the event of termination for default, A-E shall turn over all documents, plans, specifications, and reports or data generated or in progress relative to this Agreement and all of the Work Product.

In the event of termination by County, A-E shall immediately advise County of all outstanding agreements, subcontracts, rental agreements, and purchase orders, which A-E has with others pertaining to performance of the Services under this Agreement, and furnish County with complete copies thereof.

Upon request by County, A-E shall assign County, in form and content satisfactory to the County, A-E's title to materials and equipment for the Services under this Agreement and those agreements, subcontracts, rental agreements, and purchase orders designated by County.

(3) Compensation Upon Termination: In the event of termination by County for default, A-E shall not be entitled to receive any further payment until the work specified in any uncompleted Task Order(s) is completed to the satisfaction of County. If the sum of the total cost to County of completing the work plus amounts previously paid to A-E for the work is less than the fixed price for that specified in the applicable Task Order(s), such excess shall be paid to A-E up to an amount sufficient to compensate A-E for the completed and satisfactory work. If the sum of the total cost to County of completing the work plus amount previously paid to A-E for the work exceeds the Task Order price for the completed work, A-E shall promptly pay the difference to County.

Additionally, the County may pursue any action available to it to obtain relief for actual damages suffered by reason of A-E's defaults, failures or breaches hereunder and the County may withhold any payments to the A-E for the purpose of set off or partial payments of the amounts owed the County.

b. Termination by A-E Due to County's Default

(1) Notice: If County defaults in the performance of any work, service and material obligation to be performed by County under the provisions of this Agreement, and fails to correct such default (or if immediate correction is not possible, fails to undertake effective action to correct such default) within thirty (30) days following receipt of written notice thereof from A-E, A-E may, without prejudice to any other rights or remedies it may have, terminate this Agreement by written notice to County specifying the date of termination. Upon such termination, the A-E may recover from the County full payment for all work or Services performed to the date of such termination and all reimbursable expenses, if applicable.

c. Termination for Convenience of County

Notwithstanding any other provision of this Agreement to the contrary, the County may, at any time, and without cause, terminate this Agreement in whole or in part, upon not less than 30 days written notice to the A-E. Such termination shall be effected by delivery to the A-E of a notice of termination specifying the effective date of the termination and the extent of the Services (including, but not limited to Task Order(s)) to be terminated. The A-E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by County. The County shall pay the A-E for the services completed prior to the effective date of the termination, and such payment shall be A-E's sole remedy under this Agreement. Under no circumstances will the A-E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The A-E shall insert in all Team Member contracts and subcontracts that the Team Members or sub-contractors shall stop work on the date of and to the extent specified in a notice of termination, and shall require Team Members and sub-contractors to insert the same condition in any lower tier subcontracts.

d. Transfers on Termination

In the event of termination pursuant to any of the provisions of this Agreement, the A-E and the County shall forthwith return to the other all papers, materials and other properties of the other held by each. In addition, each party will assist the other in the orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible as may be necessary for the orderly, non-disrupted business continuation of each party. In the event A-E does not complete authorized but unfinished Task Orders upon the termination date, the A-E shall not be responsible for the services performed by others after termination of this Agreement, nor shall the A-E be responsible for the accuracy or workability of any incomplete plans, drawings or specifications prepared by the A-E.

**9. Default and Remedies**

a. Default by A-E

In the event (1) A-E fails to perform the Services required pursuant to this Agreement within the times set forth each Task Order; (2) A-E, or any employee or agent, Team Member or sub-contractor of A-E, wrongfully files or records a lien against any property of the County or any agent or employee of County; (3) A-E is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by the A-E, the A-E files a voluntary petition in bankruptcy or insolvency, a receiver shall be appointed for A-E and such appointment or bankruptcy or insolvency proceedings, petition, declaration or assignment is not set aside within thirty (30) days; (4) any representation or certification made by A-E to the County shall prove to be false or misleading on the date said representation or certification is made; (5) a default shall be made in the observance or performance of any covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by A-E; (6) any of the policies of insurance required to be obtained by A-E are canceled; or (7) A-E violates any laws, ordinances, rules, regulations, or orders of any public authority in the performance of its duties pursuant to this Agreement; then, provided the event as described above is not cured within thirty (30) days after written notice from the County to A-E is given, the County may declare the A-E to be in default under this Agreement and exercise any remedies available to it.

b. Default by County

In the event the County shall fail to perform its obligations pursuant to this Agreement after thirty (30) days written notice from A-E to the County is given, the A-E may declare the County to be in default hereunder and exercise any remedies available to it.

**10. Force Majeure**

The A-E shall not be responsible for damages during any delay beyond the time named for the performance of this Agreement for damages or delays in performance caused by an act of God, war, civil disturbance, labor dispute, strike, lockout, accident, or other cause or event beyond the reasonable control of the A-E, provided the A-E gives written notice of the cause of the delay to the County as soon as possible, however, not later than seven (7) calendar days of the start of the delay.

**11. Consent to Breach Not Waiver**

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. 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.

**12. 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.

**13. Non-Employment of County Personnel**

A-E agrees that no full-time, regular employee of County who is involved in this Agreement shall be given or offered employment by A-E in a participatory status during the term of this Agreement regardless of the assignments said employee may be given or the days or hours employee may work. By accepting this Agreement, A-E agrees not to negotiate any employment opportunity with any County full-time, regular employee who is involved in this Agreement in professional classifications of the same skills required for the performance of this Agreement.

Nothing in this Agreement shall be deemed to make A-E, or any of A-E's employees or agents, the agents or employees of the County. A-E shall be an independent A-E and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this Agreement. Anything in this Agreement which may appear to give OC Waste & Recycling the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of County, only in the results of the work.

**14. Non-Employment of A-E Personnel during Agreement**

County agrees that no full-time, regular employee of A-E or A-E's Team Members assigned to this Project shall be offered or given employment by County during the life of this Agreement and for a period of three (3) months after completion of this Project, unless County and A-E or A-E's Team Members mutually agree prior to any employment opportunities being discussed with the A-E's employee or A-E Team Members' employee.

**15. License and Certificates**

A-E and its Team Members and sub-contractors, if any, shall, at all times during the term of this Agreement, maintain in full force and effect such licenses or permits as may be required by the State of California or any other governmental entity. A-E and its Team Members shall strictly adhere

to, and obey, all governmental rules and regulations now in effect, or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.

**16. Patent/Copyright Materials/Proprietary Infringement**

A-E shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement. A-E warrants that any materials and software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. A-E agrees that, in accordance with the more specific requirement contained herein, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

**17. Compliance with Laws**

A-E represents and warrants 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 in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. A-E acknowledges that County is relying on A-E to ensure such compliance, and A-E agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

**18. Errors and Omissions**

All work performed by A-E shall be complete, accurate and consistent and shall be carefully checked prior to submission. A-E understands that County's checking is discretionary and A-E shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving A-E's work, the work will be returned to A-E for correction, which shall be made without additional compensation to A-E if necessary to correct errors for which A-E is responsible. Should County or others discover errors or omissions in the work submitted by A-E after County's approval thereof, County's approval of A-E's work shall not be used as a defense by A-E and A-E is not relieved of its responsibility for accuracy of its work.

County may, at its option, return the approved work for A-E to correct which shall be made without additional compensation to A-E if the necessary corrections are due to errors for which A-E is responsible, and/or County may, at its option, claim damages for breach of this Agreement. The foregoing notwithstanding, A-E's performance under this Agreement will be consistent with the norms for the profession and no other warranty is expressed or implied.

**19. Indemnification and Insurance**

**Indemnification Provisions**

A-E agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts

and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, A-E and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this Agreement.

**Insurance Requirement**

**Prior to the provision of services under this contract, the A-E agrees to purchase all required insurance at A-E's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. The County reserves the right to request the declarations page showing all endorsements and a certified copy of the policy. In addition, all subcontractors performing work on behalf of A-E pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for A-E.**

All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. A-E shall be responsible for reimbursement of any deductible to the insurer.

**If the A-E fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.**

Qualified Insurer: The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

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

**Coverage**

Commercial General Liability

**Minimum Limits**

\$1,000,000 per occurrence



	\$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence
Environmental/Pollution Liability	\$1,000,000 per claims made or occurrence

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insured.
- A primary non-contributing endorsement evidencing that the A-E's insurance is primary and any insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, employees and agents.

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

All insurance policies required by this Agreement shall give the County of Orange 30 day notice in the event of cancellation and 10 day notice for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If A-E's Professional Liability policy is a "claims made" policy, A-E shall agree to maintain

professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

Insurance certificates shall be forwarded to the County pursuant to Section 24, Notices, of this Agreement.

If the A-E fails to provide the insurance certificates and endorsements within seven days of notification by County Procurement Office or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Agreement may be in breach without further notice to A-E, and County shall be entitled to all legal remedies.

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

**20. Award of Construction Contract and Other Future Contracts**

A-E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and County policy prohibit the award of a construction agreement to an A-E or its Team Members who performed architectural-engineering or construction management services for Services performed under this Agreement as an impermissible conflict of interest. A-E is hereby informed that these statutes and regulations could also prohibit the award to A-E of design or other contracts on future phases related to the Services performed under this Agreement. This prohibition applies also to Team Members, sub-contractors, or parent company of the A-E, Team Member or sub-contractor that performed architectural-engineering or construction management services for this Agreement.

**21. Entire Agreement**

This Agreement, including all Exhibits, which are attached hereto and incorporated herein by this reference, contains the entire contract between the parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

**22. Amendments**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties.

**23. Appropriation/Contingency of Funds**

This Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Agreement. If such appropriations are not approved, this Agreement will be immediately terminated without penalty to the County.

**24. Notices**

Any notice required by this Agreement shall be deemed given by depositing said document in the United States Mail, duly registered or certified, return receipt requested, postage pre-paid, addressed to last known address of either party. Each party hereto shall give notice to the other pursuant to this Article when changing address. The present address of the parties hereto is:

COUNTY: Environmental Multi-Discipline Engineering Support Services for OC Waste & Recycling Environmental Services Section  
OC Waste & Recycling  
300 N. Flower Street, Ste.400,  
Santa Ana, CA 92703  
Attn: Warisa Niizawa, Project Manager

A-E : Advanced Earth Sciences, Inc.  
9307 Research Drive  
Irvine, CA 92618  
Attn: Kris Khilnani, Principal

**25. Confidentiality**

a. Work Product

“Work Product” as used in this Agreement includes all drawings, designs, specifications, computer database, and other incidental architectural and engineering work documentation, reports, and any other deliverables originating from the A-E its Team Members, suppliers, vendors, or sub-contractors associated with this Agreement.

b. Assurances

A-E shall assure County that the A-E and its Team Members, sub-contractors, and vendors shall hold confidential all portions of the Work Product, except as expressly authorized for release by

the Director in writing. That portion of the Work Product originating from the A-E, its Team Members, suppliers, vendors, or sub-contractors shall not be released at any time or under any circumstances without the written permission of the Director.

c. Non-Disclosure

A-E shall not disclose any of the Work Product to third parties, except as may be necessary to perform the Services required hereunder and, in any event, A-E shall take all reasonable measures to protect the propriety, secrecy and confidentiality of the Work Product. A-E is authorized to make such Work Product disclosures on a “need to know” basis as may be necessary for the performance of work by its Team Members and sub-contractors. A-E shall assure County that all A-E, Team Members’ and sub-contractors’ contracts issued or prepared by A-E or prepared by County with A-E’s assistance shall contain this confidentiality requirement.

d. Non-Utilization

A-E understands and agrees that it is County that is so entitled to be safeguarded and protected by the confidentiality of the Work Product, which it has commissioned under this Agreement. A-E unqualifiedly agrees warrants and represents that it will not utilize or disclose any aspect of the Work Product as defined herein to others for any purpose, except as specifically described herein.

**26. Independent A-E**

The A-E and Team Members shall be and act at all times during the term of this Agreement as an independent A-E vis-à-vis the County and shall not be, nor shall the A-E be construed in any manner as being, an agent, employee or officer of the County. The A-E shall solely be responsible for the Services performed under the terms of this Agreement. The County shall look to the A-E for results only. The A-E shall assume full responsibility for payments on account of itself of Federal, State and local taxes or contributions imposed or required under the Social Security, Workers’ Compensation and applicable income and employment tax laws. In this regard, the A-E certifies to the County that it is aware of the laws of the State of California requiring the self-employed to be insured against liabilities and shall comply with such laws during the term of this Agreement. Nothing contained herein shall be construed as creating the relationship of employer/employee or principal/agent.

Nothing in this Agreement shall be deemed to make A-E, or any of A-E’s employees, Team Members or agents, the agents or employees of County. A-E and Team Members shall be an independent A-E and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this Agreement. Anything in this Agreement which may appear to give OC Waste & Recycling the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of County, only in the results of the work.

**27. No Additional Compensation for Deficiencies**

Notwithstanding anything contained in this Agreement to the contrary, no compensation shall be paid to or claimed by the A-E for additional work required to correct deficiencies in any documents prepared by or on behalf of the A-E, or attributable to defaults, failures, errors or omissions of the A-E, or conflicts in the documents attributable to the A-E, or changes in any Task Order requested by the A-E, unless previously approved by the County.

**28. Books, Records and Audit**

The A-E shall keep complete and detailed books and records relating to all Task Orders. These books and records shall be retained by the A-E at its head office for a period of at least three (3) years after the termination of this Agreement. If there is a dispute between the A-E and the County, the books and records shall be retained until the dispute is finally settled. The County shall have the right at all reasonable times to audit the books and records. If such audit discloses that the A-E has charged and received more than it was entitled hereunder, the A-E shall immediately reimburse the County for the excess amount received, together with interest thereon at the rate of one percent (1%) per month but not-to-exceed the legal rate allowed by law accruing from the date such excess amount was received until repayment thereof.

A-E agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of A-E for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of this Agreement including, but not limited to, the costs of administering this Agreement. The County will provide reasonable notice of such an audit or inspection. A-E agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, A-E agrees to include a similar right to the County to audit records and interview staff of any Team Member or sub-contractors related to performance of this Agreement.

The County reserves the right to audit and verify the A-E's records before final payment is made.

Should the A-E cease to exist as a legal entity, the A-E's records pertaining to this Agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the PM.

**29. Prevailing Wage (Labor Code § 1773, 1775, 1813)**

As applicable, the A-E shall be aware, make its Team Members and sub-contractors aware of and comply with the provisions of Sections 1773, 1775, and 1813 of the Labor Code. All workers, as classified by the provisions of the Labor Code, employed by the A-E or its Team Members, sub-contractors and/or A-E for any Services under this Agreement or by any Team Members doing or

contracting to do any part of the Services under this Agreement, shall be paid prevailing wages as required by the above statutes, if and as applicable.

Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the A-E shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this contract. The rates are available from the Director of the Department of Industrial Relations at the following website: [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html)

The A-E shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The A-E shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

**30. Non-Discrimination**

The A-E shall comply with all Federal and State laws relating to civil rights. In the performance of the terms of this Agreement, A-E shall not engage in discrimination in the employment of persons because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sex of such persons, except as provided in Section 12940 of the California Government Code, and every A-E in violation of this provision may result in the imposition of penalties referred to in California Labor Code Section 1735 or other applicable State and Federal regulations.

**31. County Child Support Enforcement**

In order to comply with child support enforcement requirements of County, within 30 days of the Effective Date of this Agreement, A-E agrees to furnish and require all Team Members to furnish to the Director a fully completed and executed certification in the form of Exhibit E. It is expressly understood that this data will be transmitted to government agencies charged with the establishment and enforcement of child support orders, and for no other purposes.

Failure of the A-E and Team Members to timely submit the data and/or certification required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Agreement.

**32. Employee Eligibility Verification**

The A-E warrants that it and all Team Members and sub-contractors fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The A-E shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and

Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The A-E shall retain all such documentation for all covered employees for the period prescribed by the law. The A-E shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the A-E or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

**33. Governing Law and Venue**

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of law's provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

**34. Contract Construction**

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. 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 being encouraged and given the opportunity to do so. 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. 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. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

**35. Declared Emergency**

In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Agreement may be subjected to unusual usage. A-E shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by A-E shall apply to serving the County's needs regardless of the circumstances. If the A-E is unable to supply the goods/services under the terms of this Agreement, then the A-E shall provide proof of such disruption and a copy of the invoice for the goods/services from the A-E's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the A-E shall show both the emergency purchase order number and the contract number.

**36. Sustainability**

The County desires to further its commitment to sustainability through encouraging our vendors to adopt this business philosophy. Improving energy efficiency is a first step toward achieving sustainability in buildings and organizations. Energy efficiency helps control rising energy costs, reduces environmental footprints, and increases the value and competitiveness of the vendors. This means getting the most out of every single unit of energy, water, materials, and resources used in their business. Green concepts and practices the A-E should consider for the day-to-day operations include the following:

- Develop a plan for sustainability.
- Retrofitting current systems/buildings for increased energy efficiency.
- Selecting energy efficient products and technologies for buildings.
- Exploring renewable energy services,
- Understanding efficient water solutions.
- Reducing your organization's carbon footprint.
- Utilize green suppliers/vendors.
- Attending energy efficient and sustainability events and associated programs.
- Recycling and resource recovery.
- Diversion and reuse.

The A-E should consider sustainability for incorporation into their work product. Sustainability objectives should be identified by the A-E for use as a basis for its design. These sustainability objectives should then be reviewed by the A-E with OC Waste & Recycling for each individual project undertaking.

- Use of recycled products.
- Reuse on-site materials where available.
- Utilize green sub-A-E.
- Identify and utilize energy efficient products.
- Minimize use of raw materials/products.
- Establish a life cycle costing methodology for projects.
- Cost and value appropriately sustainability options.

**37. Change of Ownership**

A-E agrees that if there is a change or transfer in ownership 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 complete them to the satisfaction of County.

**38. 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.



**39. Severability**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**40. Calendar Days**

Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

**41. Attorney 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.

**42. Waiver of Jury Trial**

~~To the extent enforceable under California law, each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and /or any other claim of injury or damage. *Intentionally left blank.*~~

**43. Authority**

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

IN WITNESS WHEREOF, County and A-E have executed this Agreement on the dates opposite their respective signatures.

COUNTY OF ORANGE

Date \_\_\_\_\_

By \_\_\_\_\_

Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD PER G.C. SEC. 25103, RESO 70-1535. ATTEST:

Date \_\_\_\_\_

By \_\_\_\_\_

Clerk of the Board of Supervisors  
Of Orange County, California

**Advanced Earth Sciences, Inc.**

Date \_\_\_\_\_

By \_\_\_\_\_

Signature and Title\*

Date \_\_\_\_\_

By \_\_\_\_\_

Signature and Title\*

APPROVED AS TO FORM:

County Counsel

Date \_\_\_\_\_

By \_\_\_\_\_

Deputy

\* Unless otherwise demonstrated that the person(s) executing this Agreement on behalf of A-E has the requisite authority to legally obligate and bind A-E, if A-E is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

## EXHIBIT A

**SCOPE OF WORK FOR  
ENVIRONMENTAL MULTI-DISCIPLINE ENGINEERING  
SUPPORT SERVICES**

As-needed, non-routine service calls will be placed against this Agreement by the PM. Each activity under this Agreement will be covered by a Task Order. It is expressly understood that the tasks (service calls) to which the A-E is asked to respond to, will be on an “as-needed” basis, and authorized by the PM. As each task is identified by the PM, the A-E will prepare a “Task Order Proposal” which details the scope of work to be accomplished, list of deliverables, schedule for completion, and an estimated not-to-exceed cost for its completion, including a detailed breakdown of all labor and materials costs. Each Task Order Proposal will be reviewed, amended or modified, as appropriate, and approved by the PM prior to commencement of the proposed work. These services may be paid on a unit price times the number of units basis, time and materials (receipt needed for materials) basis, or lump sum basis, as mutually agreed by PM and A-E. Notwithstanding any provision to the contrary in this Agreement, in no event will any Task Order amend or modify any provision of this Agreement, including, but not limited to this Scope of Services or compensation provisions. Any such modification is void.

In the event of unforeseen circumstances occurring necessitating a modification to the authorized Lump Sum Task Order, a separate Task Order authorization may be requested by the A-E to reflect the change of the scope of services.

The A-E shall provide OC Waste & Recycling with engineering and other services for the Environmental Services Division. The primary services provided by the firm or team of firms shall include, but are not limited to, preparation of solid waste studies, reports, planning, surveying, photogrammetry, designs, permitting, hydrology and hydrogeology services, drilling, testing, review, construction quality assurance services for projects in the fields of solid waste and support services:

**1.0 Solid Waste Services**

- Prepare or review solid waste facility permits (SWFP)
- Prepare, update and/or review joint technical documents (JTD)
- Prepare and/or review conditional use permits (CUP)
- Prepare and/or review waste discharge requirements (WDR)
- Prepare, update and/or review master development plans
- Prepare and/or review construction cost estimates
- Prepare and/or review alternatives to prescriptive liner standard designs
- Prepare and/or review construction plans and specifications
- Prepare and implement or review evaluation-monitoring plans
- Prepare and/or review landfill gas, leachate, and groundwater investigation and implement corrective action plans

- Prepare and/or review landfill gas monitoring, design, construction, monitoring, maintenance, and/or modification of landfill gas collection and disposal systems
- Emission testing for flares
- Prepare and/or review CUPA documents
- GHG Report preparation and verification services.
- Design and/or provide post-closure maintenance of landfill cover systems, landfill gas systems, groundwater monitoring systems, and infrastructure
- Prepare, update and/or review closure/post-closure maintenance plans
- Prepare, update and/or review long term monitoring and operational plans
- Prepare, update and/or review SPCC Plans
- Perform and/or review Subtitle D determinations
- Perform other solid waste services as required
- Review and analyze new legislation and regulations

## **2.0 Hydrology and Hydrogeology Services**

- Prepare and/or review hydrology and hydrology studies, including field investigation by drilling, coring, and pumping tests
- Monitor groundwater quality, flow rates, and other parameters
- Prepare and implement plans for monitoring unsaturated (vadose) zones
- Prepare groundwater monitoring reports
- Design groundwater remediation systems
- Perform water balance analyses
- Design hydraulic structures, including detention basins, erosion control systems, surface drains, down drains, pumping systems, and other structures
- Perform and/or review NPDES inspections, sampling and analyses
- Prepare NPDES monitoring reports and plans
- Prepare SWPPP reports and/or updates
- Perform or review groundwater sampling and analyses
- Perform or review seepage evaluations
- Perform other hydrology and hydrogeology services as required

**3.0 QA/QC Services**

- Apply and obtain construction-related permits
- Review Contract Documents and prepare QA/QC Plans
- Establish Certification and Reports required by OC Waste & Recycling and regulatory agencies
- Provide QA/QC and engineering support during monitoring wells/probes installation and abandonment
- Perform laboratory testing as necessary to assure QA/QC requirements of the specifications are met
- Perform QA/QC and engineering support during construction of projects including concrete and asphalt elements of the project
- Review contractor's submittal of materials catalog data, shop drawings, field and factory testing, and other technical submissions for compliance with contract specifications, and recommend acceptance or rejection
- Review and verify construction contract change order submittals for technical compliance with the contract terms
- Review as-built drawings submitted by the contractors
- Prepare final report for each project addressing the as-built geotechnical aspects of the projects
- Prepare as-built reports
- Assist OC Waste & Recycling with documentation processing for regulatory agency requirements
- Conduct training for OC Waste & Recycling personnel in groundwater sampling techniques, SPCC inspections, NPDES sampling and inspection protocols, plus other training as requested
- Perform other QA/QC services as required

**4.0 Civil Engineering Services**

- Provide field surveying and site inspection services
- Provide aerial photogrammetry services
- Perform other civil engineering services as required

Other services that may be required and provided by the A-E on an as-needed basis will be construction management, civil, mechanical, electrical and geotechnical engineering services, real estate and miscellaneous services:

**5.0 A-E Services**

- Design access roadways (temporary, operational, and permanent), including pavements signage, and roadway culverts
- Prepare landfill grading, drainage, and erosion control plans
- Provide or review design services for stockpiles, drainage facilities, and other structures
- Prepare fill-sequencing plans
- Provide miscellaneous civil, geotechnical, mechanical and electrical engineering, geological services, and other solid waste related engineering services
- Provide miscellaneous civil, geotechnical, mechanical and electrical engineering, geological services, and other solid waste related engineering services
- Perform other A/E services as required

**6.0 Geotechnical Engineering Services**

- Perform and/or review geotechnical reconnaissance of landfill sites and adjacent properties
- Perform and/or review slope stability analyses
- Perform literature review of previous geological, hydro-geological, and geotechnical investigations
- Perform and/or review field geological, and hydro-geological mapping and interpretations
- Perform and/or review soil borrow studies, both on-site and off-site, including soil properties and quantities
- Perform and/or review subsurface exploration, including subcontracting for drilling or other exploration services
- Perform and/or review geophysical investigation, including surface and borehole surveys
- Perform and/or review geotechnical and analytical laboratory testing
- Perform and/or review subsurface soil condition explorations
- Perform and/or review excavation and earthwork observations and recommendations
- Perform and/or review erosion potential and slope evaluation of cut and fill slopes
- Perform and/or review stability of cut and fill slopes and evaluate landslide potential
- Perform other geotechnical engineering services as required

**7.0 Real Estate Related Services**

- Perform and/or review property surveys
- Prepare and/or review legal descriptions

- Update and revise property maps to show boundary changes, easements, or other modifications
- Obtain and review title reports as required
- Perform other real estate related services as required

**8.0 Construction Support Services**

- Review projects for completeness, compatibility, and coordination of plans and specifications, ability to construct, and construction means and methods
- Review all drawings and specifications and advise OC Waste & Recycling whether the design process is on schedule and within the project scope and budget
- Review Invitation to Bid, Proposal format, General Conditions, Supplementary Conditions, and Special Conditions for construction contracts
- Evaluate bids and bidders and make formal recommendations to OC Waste & Recycling
- Develop, implement, and monitor effective systems for project cost control
- Coordinate construction work with activities and responsibilities of materials testing and inspection teams to complete the project in accordance with the County's objectives of cost, time and quality
- Develop and implement a system for the preparation, review, and processing of construction change orders. Recommend necessary and/or desirable changes to OC Waste & Recycling, review requests for changes, and/or negotiate change orders
- Observe construction contractor's work for contract compliance and quality control
- Review and make recommendations pertaining to progress payments to each contractor
- Provide regular updates of the milestone summary schedule and monthly progress reports on the project
- Monitor the prime contractor's development and implementation of health and safety plans to comply with all Federal, State, municipal and local laws, rules, and regulations
- Provide claim analyses and recommendations as required
- Provide survey work as required
- Provide other construction management services as required

Other services that may be required and obtained on an as-needed basis are construction management, civil, mechanical, electrical, geotechnical engineering services, real estate-related and miscellaneous services not specifically shown above related to each section.

**EXHIBIT B**  
**KEY PERSONNEL**  
**(Organization Chart)**







**EXHIBIT C**  
**SCHEDULE OF FEES**  
**OC WASTE & RECYCLING**  
**ENVIRONMENTAL MULTI-DISCIPLINE ENGINEERING SUPPORT SERVICES**  
**2012 - 2015 2016 SCHEDULE OF FEES**

<u>Personnel Category</u>	<u>Rate/Hour</u>
01. Senior Principal/Technical Reviewer.....	\$195
02. Principal Engineer/Principal Geologist (Project Manager).....	\$186
03. Associate.....	\$163
04. Senior Engineer/Senior Geologist.....	\$145
05. Project Engineer/Project Geologist.....	\$130
06. Staff Engineer/Staff Geologist.....	\$110
07. Senior Technician/Technician – Prevailing Wage.....	\$115
08. Senior Technician/Technician – Prevailing Wage Overtime*.....	\$135
09. Senior Technician/Technician-Prevailing Wage Double Time*.....	\$155
10. CADD/Graphics.....	\$90
11. Project Administrator/Word Processor.....	\$80
12. Construction Manager (Simplus).....	\$185

Communications Charge  
(in-house computers, cell phones, shipping, routine copying) .....3% of total labor cost

\*Overtime shall be charged only when authorized by OC Waste & Recycling.

**Other Direct Costs (ODCs) Markups**

Out of Pocket Expenses (when authorized by PM).....Cost plus 10 percent

Such expenses may include but not be limited to:

- Drilling Subcontractor Costs
- Geophysics and Field Testing Subcontractor Costs
- Subcontractor Laboratory Tests
- Backhoe Rental Costs
- Consumables for Field Testing such as Sampling Supplies
- Outside Reproduction Costs
- Permits and Regulatory Fees

ENVIRONMENTAL MULTI-  
SERVICES  
2012 - 2015 2016 SCHEDULE OF FEES

SCHEDULE OF FEES  
OC WASTE & RECYCLING



**Advanced  
Earth Sciences, Inc.**  
Geotechnical and Environmental Consultants

DISCIPLINE ENGINEERING SUPPORT

**Field Testing and Equipment**

Nuclear Gauge	\$160.00/week or \$50.00/day
BAT™ Equipment	\$2,500.00/month or \$250.00/day
GPS Rental	\$100.00/day
Inclinometer Probe and Data Recorder	\$200.00/day

**Vehicles**

Field Vehicle	\$85.00/day \$400.00/week
Mileage (Automobile)	\$1,500.00/month Government Rate

**Reproduction/Plotting (in-house) for Final Reports, Deliverables**

Black and White (8½ x 11)	\$0.10 each
Color (8½ x 11)	\$1.00 each
Color (11 x 17)	\$2.00 each
Color Plotting	\$5.00/sq. ft.



**SCHEDULE OF FEES  
OC WASTE & RECYCLING  
ENVIRONMENTAL MULTI-DISCIPLINE ENGINEERING SUPPORT SERVICES  
2012 - 2015 2016 SCHEDULE OF FEES**

<u>Laboratory Test Fee Schedule</u>	<u>Rate</u>
<b>A. Identification and Index Properties Test</b>	
Moisture Content-ASTM D2216	\$20.00
Moisture Content & Density-ASTM D2937	
Shelby Tube Sample	\$35.00
Ring Sample	\$30.00
Atterberg Limits-ASTM D4318	\$110.00
Particle-Size Analysis	
Coarse and Fine Gradation of Coarse and Fine Aggregate-ASTM C136	\$175.00
Sieve Analysis (from + #200 to 3 in.)-ASTM D6913	\$150.00
Fine Sieve Analysis (from #200 to No. 4)-ASTM D6913	\$100.00
Sieve and Hydrometer-ASTM D422 (No.4 to clay)	\$150.00
Percent Passing #200 Sieve-ASTM D1140	\$70.00
Specific Gravity	
Fine (passing #4)-ASTM D854	\$75.00
Coarse (retained on #4)-ASTM C127	\$90.00
Sand Equivalent Value-ASTM D2419	\$90.00
<b>B. Soil Chemistry</b>	
Soil pH-ASTM G51	\$30.00
Electrical Resistivity-DOT CA Test 532	\$60.00
Sulfate Content-DOT CA Test 417-B	\$60.00
Chloride Content-DOT CA Test 422	\$60.00
Corrosion Suite including all of the above	\$200.00
Organic Matter Content-ASTM D2974	\$75.00
<b>C. Compaction and Bearing Capacity</b>	
Standard Proctor Compaction-ASTM D698	\$160.00
Modified Proctor Compaction-ASTM D1557	
Procedures A and B (4-inch mold)	\$170.00
Procedure C (6-inch mold)	\$190.00
Rock Correction	\$75.00
California Bearing Ratio (CBR)-ASTM D1883	
Three Point	\$525.00
One Point	\$225.00
R-Value-ASTM D2844	
Untreated	\$285.00
<b>D. Shear Strength</b>	
Direct Shear-Soil (Prices for three points)	
Consolidated-Drained (granular soil)-ASTM D3080	\$250.00
Consolidated-Drained (fine-grained soil, very slow shearing)-ASTM D3080	\$325.00
Consolidated-Undrained (fine-grained soil)	\$250.00
Residual Shear Strength (3 shearing cycles)	\$500.00
Remolding of Specimens (per set of 3)	\$45.00
<b>E. Static Uniaxial and Triaxial Strength Tests</b>	
Unconfined Compression-ASTM D2166 on Undisturbed Sample	\$123.00

**Laboratory Test Fee Schedule**

	<b>Rate</b>
Unconsolidated Undrained (UU,Q)-ASTM D2850 per Confining Stress	\$155.00
Consolidated Undrained (CU,R) with Back Pressure Saturation and Pore Water Pressure Measurement ASTM D4767 (per point)	\$390.00
Consolidated Drained (CD,S) with Volume Change Measurement (per point)	\$390.00
Three Stage Triaxial Tests	\$950.00
Hand Trimming or Remolding of Specimens (per sample)	\$45.00
<b>F. Consolidation and Swell Tests</b>	
Consolidation Test-ASTM D2435	
Six load increments from 0.2 up to 12.8 ksf and unload to 0.2 ksf (including plot)	\$225.00
Time Reading and Curve per Increment	\$60.00
Each Additional Loading or Unloading Increment w/o Time Reading	\$35.00
Each Additional Loading or Unloading Increment w/Time Reading	\$60.00
Each Unload – Reload Cycle	\$150.00
Expansion Index Test-ASTM D4829	\$135.00
Single Load Swell/Collapse Test-ASTM D4546	\$130.00
<b>G. Permeability Tests</b>	
Constant Head Permeability of Granular Soils-ASTM D2434	\$180.00
Triaxial Permeability in Flexible-Wall Permeameter- ASTM D5084	
Measurement at One Effective Stress	\$275.00
Each Additional Effective Stress	\$100.00
Hand Trimming or Remolding of Specimens	\$45.00
Capillary-Moisture Relationship for Soil-ASTM D2325 & ASTM D3152	\$280.00
<b>H. Concrete Cylinders</b>	
Compressive Strength	\$30.00/each
Test Report	\$100.00/each



**Shaw**® Shaw Environmental, Inc.  
**FEE SCHEDULE 2012 – 2015-**  
**2016**

**OC Waste & Recycling Environmental Multi-Discipline  
Engineering Support Services**

<u>Category</u>	<u>Rate</u>
<b>Business Line</b>	<b>\$200.00</b>
Project Manager III / Program Manager III / Business Line Manager	
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
<b>Professional Level V</b>	<b>\$175.00</b>
Project Manager II / Program Manager II	
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
<b>Professional Level IV</b>	<b>\$155.00</b>
Project Manager I / Program Manager I	
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
<b>Professional Level III</b>	<b>\$145.00</b>
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
<b>Professional Level II</b>	<b>\$115.00</b>
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
<b>Professional Level I</b>	<b>\$90.00</b>
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
<b>Administrative</b>	
Administrative Assistant II	<b>\$70.00</b>
Administrative Assistant I	<b>\$65.00</b>

Depositions and expert witness testimony, including preparation time, will be charged at 1.5 times the above rates.

Vehicle (day) including fuel	\$80.00
Reimbursables, (Cost +10%)	Cost 10%
Communication/Shipping/Routine Copying	+ 3% of total gross labor



### Schedule of Hourly Rates for Services

Effective August 1, 2012 through December 31, ~~2015~~ 2016

Professional Land Surveyor	\$161.00
Technician/CAD Operator	\$110.00
One Person Survey Party w/equipment	\$177.00
Two Person Survey Party w/equipment	\$249.00
Three Person Survey Party w/equipment	\$330.00
Clerical Delivery	\$60.00

Prints, research material, out of town travel expenses & other incidental supplies Cost + 10% Mileage will be charged at the current IRS rate.

Authorized overtime shall be charged at 1.35 times the regular rate except for Sundays and/or holidays. Rates for Sunday shall be 1.75 times the regular rate and for holidays it shall be 2.0 times regular rates.

Daily overtime billing for field survey work during Monday through Friday does not commence until 8 hours of on-site work has been completed. (Travel time is not charged at overtime rates.)

**AMEC ENVIRONMENT & INFRASTRUCTURE  
 SCHEDULE OF FEES  
 2012  
 THROUGH 2015-2016  
 FOR ORANGE COUNTY WASTE & RECYCLING ENVIRONMENTAL MULTI-DISCIPLINE  
 ENGINEERING SUPPORT SERVICES**

The Schedule of Charges applies to all services provided by and/or through AMEC Environment & Infrastructure Inc. (AMEC).

**LABOR:**

Labor charges are for technical work, including technical typing, editing, and graphics involved in the preparation of reports and correspondence and for the time associated with production of such documents. Direct charges are not made for secretarial service, office management, accounting, and maintenance, because these items are included in overhead. Labor category charge rates for AMEC are listed below. Rates for individuals will be provided on request.

<u>LABOR CATEGORY</u>	<u>HOURLY RATE</u>
Principal	\$225
Senior II	190
Senior I	175
GIS Programmer/Web Designer	135
Project II	135
Project I	125
Field Engineer	112
Staff II	112
Staff I	105
Senior Technician	87
Senior Technician – Prevailing Wage	125
Field Technician	83
Field Technician – Prevailing Wage	105
CAD/Graphic Designer	88
Technical Editor	87
Project Assistant	70
Support Staff	65

Time spent in travel in the interest of the client will be charged at hourly rates, except that no more than 8 hours of travel time will be charged in any day. When it is necessary for an employee to be away from the office overnight, actual costs, or a negotiated rate, will be charged for living expenses. Employee expenses will be charged at cost plus 10%.

Charges for expert witness services will be at the hourly rates shown. However, for depositions and for court appearances, the rate is twice the amount shown. There will be a 4-hour minimum per-day charge for depositions and an 8-hour minimum per-day charge for court appearances. Special accounting services will be billed at the Support Staff rate.

**COMMUNICATIONS CHARGE:**

Three percent (3%) of Labor charges for routine photocopying, regular mail postage, and fax/telephone/cellular phone usage.

**OUTSIDE SERVICES:**

Outside services will be charged at cost plus 10%. Common outside items include: consultants, drilling services, laboratory testing, equipment and vehicle rental, printing and photographic work, postage and shipping, conference calls, travel and transportation.

**REIMBURSABLES:**

Non-routine Photocopies	\$0.12/sheet
Specialized Computer Applications	\$25.00/hour
Field vehicle (pick-up truck or van)	\$90/day
Field equipment, specialized reproduction	on request

**EXHIBIT D**  
**SUPPORT COST (if applicable)**

Not applicable to this Contract.



EXHIBIT E

County of Orange Child Support Enforcement Contract Terms and Conditions

ADDITIONAL TERMS AND CONDITIONS

In order to comply with the child support enforcement requirements of the County of Orange, within 30 of the Agreement Effective Date, the A-E agrees to furnish the required data and certifications to the Director, the Purchasing Agent, or the agency/department deputy purchasing agent.

Failure of the A-E to timely submit the data and/or certifications required or to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

=====

County of Orange Child Support Enforcement Certificate

"I certify that \_\_\_\_\_ is in full compliance with all applicable federal, state, and local reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract \_\_\_\_\_, with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract."

\_\_\_\_\_  
*Signature\** *Name (Please Print)*

\_\_\_\_\_  
*Title* *Date*

\_\_\_\_\_  
*Company Name*  
*Contract Number*

**\*Two signatures required if a corporation.**

## REGULATORY COMPLIANCE REQUIREMENTS

The A-E shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of the A-E's failure to comply with those provisions within the A-E's control as listed below. The A-E shall be responsible for ensuring that the A-E's subcontractor(s) and Team Member(s) comply with the provisions of this Section. The A-E shall be liable for any action or inaction resulting in a fine imposed by the regulatory agencies on those incidents of noncompliance that is within the A-E's area of responsibility.

### 1. PERMITS

- A. The A-E shall be responsible for obtaining all trade-related permits required by the Task Order, permits required for the operation and storage of any equipment or hazardous regulated materials brought onsite, and permits required for dispensing and storing of petroleum-related products.
- B. The A-E shall maintain copies of all permits required for construction required by a Task Order at the job site. Exceptions to this shall be the South Coast Air Quality Management District (SCAQMD) permit for dust control and the SCAQMD permit and Local Enforcement Agency (LEA) approval for refuse excavation, if required, which shall be obtained by the County. However, it is still the responsibility of the A-E to comply with the conditions in the SCAQMD permits and all other permits, which shall become a part of this Agreement. The A-E shall submit to the County a California Occupational Safety Health Agency (Cal-OSHA) Excavation Permit, if necessary. The A-E shall obtain a copy of the landfill's National Pollutant Discharge Elimination System (NPDES), Storm Water Pollution Protection Plan (SWPPP) and Monitoring Program (MP) and comply with the conditions therein that are applicable to the A-E.

### 2. REGULATORY COMPLIANCE AUTHORITIES

All work shall be performed in accordance with the most current regulatory criteria and standards, which include, but are not limited to:

- Waste Discharge Requirements issued by the respective California Regional Water Quality Control Boards;
- Resource Conservation and Recovery Act, Subtitle D;
- California Code of Regulations Titles 8 (Cal-OSHA), 14, 23, and 27;
- South Coast Air Quality Management District Rules 403, Title V, NSPS and 1150.1;
- National Pollutant Discharge Elimination System (NPDES) including Construction General and Industrial General Permits;
- County of Orange OC Public Works, ; County of Orange OC Public Works Grading Manual and Excavation Code;
- Uniform Fire Code;
- Others may include: APWA Standard Specifications, current County of Orange Hydrology Manual and California Environmental Quality Act, as well as instructions set forth by the Director of OC Waste & Recycling or designee; and
- Any other agency permits pertinent to the Project.

**3. ORDINANCES**

Construction shall conform to all Federal, State, County, and local codes, ordinances, regulations, and standards having jurisdiction thereof. In the case of conflict between any such applicable documents mentioned above and the specifications and drawings, the highest requirement shall govern. No additional charges shall be allowed for any changes to make work conform to regulations of above-mentioned documents or governing agencies, but shall be considered as completely included in the Task Order price.

**4. CULTURAL/SCIENTIFIC RESOURCES**

- A. The County may employ the services of a paleontological/archaeological firm to monitor the excavation at the project site. The A-E shall cooperate with the personnel of the firm. In the event the paleontologist or archaeologist asks the A-E to stop work in a particular section of the excavation, the A-E shall abide by the request immediately.
- B. If the A-E's operations uncover, or A-E's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological, or other artifacts of like nature within the construction area, the A-E shall immediately notify the County's onsite representative of the A-E's findings and shall modify the construction operations, so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such findings from the County.
- C. Should the findings, or notification as to disposition of findings, result in delays or extra work, additional time and/or extra work, payment will be allowed as provided for within the Task Order.
- D. Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

**5. DISPOSAL OF SOLID WASTE**

The A-E shall be responsible for proper disposal of all refuse. Unless the waste meets Class III solid waste criteria, and any other requirements in the landfill's solid waste facilities permit, the A-E shall not dispose of said waste at the landfill. If the A-E elects to dispose of Class III refuse in any OC Waste & Recycling operated landfill, the A-E shall be responsible for processing refuse through the scales and shall pay the current gate fees, unless it is specified otherwise in the Task Order.

Solid waste resulting from maintenance and service may be disposed of within the active landfill at no charge if acceptable within the guidelines of a Class III landfill and approved in writing by the County. The A-E shall contact the PM prior to disposal of solid waste resulting from maintenance and service. Furthermore, the A-E shall not dispose of such waste prior to receipt of a written approval from the PM, which identifies a designated disposal area.

Any other solid waste or liquid waste resulting from service and maintenance that is unacceptable for disposal in a Class III landfill (including tires) shall be the sole responsibility of the A-E and the cost of disposal shall be included as part of the Task Order. The A-E shall arrange for a State approved waste-handling firm to dispose of any material classified as hazardous or unacceptable waste. This firm shall be bonded and found acceptable to County of Orange CEO/Risk Management. The A-E shall submit proof of this firm being retained by the A-E within ten (10) calendar days of the effective date of this Agreement. Any unacceptable refuse left beyond thirty (30) days may be disposed of by the County and any related costs shall be deducted directly from the monthly invoicing, performance bond, or other method at the option of OC Waste & Recycling.

**6. DISPOSAL OF LIQUID WASTE**

The County does not permit disposal of liquid waste of any kind in County landfills. This includes any waste materials, sludge, soils, etc. with moisture content over 50%.

**7. STORM PROTECTION**

- A. The A-E shall take every practicable precaution to minimize danger to persons and to the work during rainy or windy conditions. The County shall protect all County facilities within their work project. Also the A-E shall protect all facilities from damage.
- B. As part of its storm protection, the A-E shall provide a storm water management plan (erosion control plan), to be reviewed and approved by the County. (The County is not responsible for damage if the Storm Water Management Plan is deficient or inadequate for managing storm water flows.)

**8. NPDES STORM WATER DISCHARGES**

Work under this Agreement shall be subject to the requirements of the NPDES storm water regulations.

The A-E shall comply with the NPDES Regulations and the Storm Water Pollution Protection Plan for the landfill at which the work is to be conducted. Construction-related activities, including but not limited to the elements of the SWPPP, shall be performed to eliminate non-storm discharges to the storm water control system, by the A-E and subcontractor(s). The A-E shall submit a Storm Water Management Plan in compliance with NPDES Regulations and Site specific SWPPP. OC Waste & Recycling will notify the A-E of any non-compliance with the foregoing stipulations, and appropriate actions shall be taken promptly. The A-E shall also notify OC Waste & Recycling of any condition that could lead to noncompliance with the permit requirements. The A-E shall be responsible for storm water monitoring at the landfill to comply with his proposed storm water plan, if necessary.

The A-E shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of the A-E's failure to comply with those provisions of the SWPPP within the A-E's control. The A-E shall be responsible for ensuring that the A-E's subcontractor(s) comply with the provisions of this Section. The A-E shall be liable for any action or fine imposed by the regulatory agencies on those incidents of noncompliance that are within the A-E's area of responsibility.

The A-E will be required to prepare a NPDES Construction General Permit Notice of Intent (NOI) if required. The County will submit the NOI as the Legally Responsible Party (LRP)

**9. DISCOVERED HAZARDOUS WASTE**

- A. The A-E shall promptly, and before the following conditions are disturbed, notify the County in writing of any:
  - (1) Material that the A-E believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
  - (2) Subsurface or latent physical conditions at the site differing from those indicated; and
  - (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.
- B. The County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve a hazardous waste, and cause a decrease or increase in the A-E's cost of, or the time required for, performance of any part of the work, the County shall issue a

Change Order under the procedures described in the Contract. If hazardous waste is found, the County will contact its key waste A-E to properly remove and dispose of the waste. The A-E shall not disturb the waste. The A-E shall immediately notify the County if the waste is found leaking, not containerized, or vapors or odors are detected.

- C. In the event that a dispute arises between the County and the A-E where the conditions materially differ, or involve hazardous waste, or a decrease or increase in the A-E's cost of, or the time required for performance of any part of the work, the A-E shall not be excused any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The A-E retains any and all rights provided either by the Contract or by law pertaining to the resolution of disputes and protests between the contracting parties.

**10. A-E GENERATED HAZARDOUS WASTE**

The A-E is responsible for the proper handling, storage, transportation (per all Federal, State and Local Regulations), and disposal of any hazardous wastes, liquid wastes or nuisance wastes (i.e. finely divided, powdery/dusty materials, strong odor, etc.) it generates on County property or elsewhere when performing work on the County's behalf.

The A-E must have an OC Waste & Recycling Safety Officer reviewed and County approved Emergency/Contingency Plan for handling spills of hazardous, liquid or nuisance materials it is using while working on County property or elsewhere when performing work on the County's behalf. This shall include proper handling, removal and disposal of these materials per all applicable Federal and State requirements. The Plan shall also include emergency notification to County staff and emergency personnel.

The spill-damaged area(s) must be restored/repared to its original condition by the A-E in a correct and timely manner and to the satisfaction of the County.

The A-E shall provide copies of all manifests, bills of lading, etc. to the County upon request to verify proper disposal to a licensed, permitted facility has occurred.

The County has the authority to perform inspections of the A-E's work area at any time to insure all applicable regulations are being adhered to.

The A-E is responsible for training their employees, as required by OSHA CCR Title 8, in the proper handling, storage, transportation and disposal of hazardous materials. These employees must also be trained in the Emergency/Contingency Plan and know immediate response procedures should a release occur.

The A-E shall keep emergency response equipment and materials available in the working area, should a release occur.

**11. FUGITIVE DUST EMISSION CONTROL**

The A-E shall comply with the requirements of the OC Waste & Recycling Fugitive Dust Emission Control Plan in conformance with the SCAQMD Rule 403. The A-E shall also notify OC Waste & Recycling any condition that could lead to noncompliance with the permit requirements.

The A-E shall submit a Dust Control Plan to be received and approved by the County.

If the A-E fails or refuses to correct the noncompliance immediately, OC Waste & Recycling may terminate the A-E's right to proceed with the work, by written notice to the A-E. In such event, OC Waste & Recycling may take over the work and prosecute the same to completion, by contract or otherwise at the A-E's expense, and may take possession of and utilize in completing the work such materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not the A-E's right to proceed with the work is terminated, the A-E and the A-E's Sureties shall be liable for any

damage to the County resulting from the A-E's refusal or failure to complete the work within the specified time. The A-E shall not be entitled to any time extensions or compensation for any cost due to any such action as a result of the A-E's failure to comply with those provisions of the OC Waste & Recycling Fugitive Dust Emission Control Plan within the A-E's control. The A-E shall be responsible for ensuring that all sub A-E(s) comply with the provisions of this section. The A-E shall be liable for any action or fine imposed by the SCAQMD on those incidents of noncompliance that are within the A-E's area of responsibility.

OC Waste & Recycling's Fugitive Dust Emission Control Plan (SCAQMD Rule 403-Fugitive Dust-April 1993) is available for review by the A-E in the offices of the OC Waste & Recycling Project Manager.

**12. BIOLOGICAL AND HABITAT PROTECTION**

OC Waste & Recycling will inform the A-E of any biological resources that would or could be impacted by the project, and specify any required mitigation measures or procedures to protect those resources during construction. The A-E shall be responsible for complying with these protection measures, and for ensuring that all sub A-Es also comply. The County has the authority to perform inspections of the A-E's work area at any time to ensure that these measures or procedures are being followed.

**13. MAINTENANCE FACILITY AND WORK AREA**

Maintenance facility areas have been designated at the Landfill for the purpose of maintaining County equipment. This area is intended to be available for use by the County's Equipment Maintenance A-E and for other contractors and haulers only upon permission and at the convenience of OC Waste & Recycling. Any contractor permitted to utilize this area shall inspect the area and comply with any and all provisions of these Regulatory Compliance Section Articles. All contractors shall keep the facility clean. If this facility becomes unavailable to the County's Equipment Maintenance A-E for any reason, the County's Equipment Maintenance Contractor shall be provided an alternate location acceptable to the OC Waste & Recycling Regional Project Manager or designee. No such guarantee of an alternate location is made to any other contractor or hauler by the County. All costs related to relocating the facility is the sole responsibility of the County's Equipment Maintenance Contractor and shall be included as part of the fixed rate price agreement.

Any damage or repairs caused by the A-E or his vendors/suppliers to the designated maintenance area or other landfill facilities/projects shall be paid for or repaired by the A-E to the satisfaction of OC Waste & Recycling. All construction and/or replacement shall be done with materials and equipment of the same kind constructed or product installed. If the A-E does not repair the damaged facility/area within thirty (30) calendar days, the A-E shall pay for all construction/installation and related costs performed by the County by direct deduction plus a five percent (5%) administration fee from the monthly invoice or by invoiced separate payment. Any facility considered crucial to the operation of the landfill must be repaired immediately and costs shall be paid by direct deduction plus a five percent (5%) administrative fee as above indicated in the same manner.

The A-E shall be responsible for maintaining clean equipment and a clean working area. Removal of contaminated soil as a result of maintenance activities shall be the sole responsibility of the A-E and shall be mitigated to OC Landfill's satisfaction immediately following written notice from the OC Waste & Recycling Project Manager. The area of contamination may be tested and certified by a third independent party qualified to conduct the evaluation. The proposed certifying firm shall submit qualifications to the OC Waste & Recycling Project Manager for acceptance and approval. All costs associated with contaminated soil removal, disposal and certification, if necessary, shall be the sole responsibility of the A-E. Prior to removal, the A-E must provide a manifest of transport showing legal disposal of contaminated material. A copy of the manifest, certified and approved by the disposal location, shall be provided to OC Waste & Recycling prior to shipment. If the manifest is not submitted,

**Attachment D**

OC Waste & Recycling will withhold or deduct directly the estimated cost of removal and disposal from monthly invoice, plus five percent (5%) administration fee until the manifest or appropriate documentation is submitted by the A-E.

Upon written notice from the OC Waste & Recycling Project Manager, if the A-E does not comply with the removal of the contaminated soil immediately, OC Waste & Recycling will remove, process, transport, and certify the material as stated above and all costs incurred by OC Waste & Recycling for removal and disposal, plus a five percent (5%) administrative fee will be deducted directly from the A-E’s monthly invoice or through supplemental payment as approved by the OC Waste & Recycling Project Manager or designee.

The A-E shall be responsible for the storage and protection of any and all products in accordance with manufacturer instructions; product seals and labels shall be intact and legible, and sensitive products shall be stored in weather tight, climate controlled enclosures. The A-E shall arrange storage of products to permit access for inspection by OC Waste & Recycling or enforcement agency personnel.

**14. RED IMPORTED FIRE ANT INTERIOR QUARANTINE OF ORANGE COUNTY**

The A-E shall be responsible for strict compliance with the quarantine of the County of Orange for the red imported fire ant as defined in the California Food and Agricultural Code in Division 4, Chapter 3, Subchapter 4, Article 4, Section §3432 incorporated herein by reference with regards to the quarantine area, the commodities covered, and the restriction on movement, possession and sale of commodities covered. Violation of any provision of this Article of this Agreement and/or the State mandate by the A-E shall require the A-E to bear the full financial responsibility of any assessed fine or penalty on the County, indemnify the County by the completion and submission for County approval of an acceptable, detailed, incident report within five working days of the date of the violation or not later than five working days from the date of the notification of the violation, whichever is the later.

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