

A G R E E M E N T

THIS AGREEMENT, hereinafter referred to as “AGREEMENT” for purposes of identification hereby numbered MA-080-16010133, and dated _____ day of _____, 20_____ is

BY AND BETWEEN

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

AND

Steinberg & Associates, a Partnership, hereinafter referred to as “A/E”,

which are sometimes individually referred to as “PARTY” or collectively referred to as “PARTIES.”

RECITALS

WHEREAS, DISTRICT requires professional services to accomplish projects and/or services (“PROJECTS/SERVICES”) as described in Scope Of Work for Specialized Professional Services, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference.

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

1. GENERAL

1.1 Retainer

- 1.1.1 DISTRICT does hereby retain A/E to perform the PROJECTS/SERVICES as required by this AGREEMENT.
- 1.1.2 A professional, who shall be assigned to PROJECTS/SERVICES and whose services are offered by A/E and accepted by DISTRICT is *(Naomi Kogon-Steinberg)*.
- 1.1.3 A/E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and, it is agreed that only the following firms or independent consultants/contractors are to be employed to provide these PROJECTS/SERVICES, and that the aggregate money value of their PROJECTS/SERVICES shall not constitute more than forty-nine percent (49%) of the total amount of PROJECTS/SERVICES required under this AGREEMENT:

a. N/A

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

1.1.5 A/E's employment of independent consultants/contractors shall not relieve A/E from the performance of its own responsibilities pursuant to this AGREEMENT. However, all consultants/contractors independently contracting with DISTRICT shall be independently liable to DISTRICT for the performance of the work pursuant to their agreements, and A/E shall have no liability for work by contractors independently contracting with DISTRICT.

1.2. Projects/Services

1.2.1 Description of PROJECTS/SERVICES

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

1.3 Assistance by DISTRICT STAFF

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

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

1.4 Term and Maximum Compensation

1.4.1 The term of this AGREEMENT is for **three (3)** years commencing upon approval by the DISTRICT Board of Supervisors, with a maximum allowable compensation of **one hundred fifty thousand dollars (\$150,000)**, except as permitted in Paragraph 1.5 below.

1.5 A/E Compensation and Extra Work

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

1.5.2 For completion and approval of all PROJECTS/SERVICES where "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation

including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment B", attached hereto and incorporated herein by reference.

1.5.3 Where extra work is authorized for PROJECTS/SERVICES:

- a. The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by DIRECTOR. If this AGREEMENT is not approved by the Board of Supervisors, any change that increases the cumulative AGREEMENT price beyond \$100,000 must be approved by the Board. Increases in the AGREEMENT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing AGREEMENT price or \$100,000, whichever is less.
- b. A/E's billing for the Extra Work shall include but not be limited to names of A/E's staff employed in the Extra Work, classification of employees and number of hours worked.

1.5.4 For partial completion of work of PROJECTS/SERVICES followed by default on part of A/E:

- a. For failure to complete and secure approval of the first required submittal, there shall be no compensation.
- b. For failure to complete and secure approval of other authorized phases, A/E shall, upon completion of PROJECTS/SERVICES by others, be entitled to receive compensation based on approved work of PROJECTS/SERVICES not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by DISTRICT of the non-approved work; provided, however, that if the cost to DISTRICT to complete the contract exceeds the amount specified herein, A/E shall be liable to DISTRICT for such excess costs attributable to A/E's breach of the AGREEMENT.

2. LABOR

2.1 Non-Employment of DISTRICT and/or Personnel

2.1.1 A/E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of DISTRICT in professional classifications of the same skills required for the performance of this AGREEMENT who is involved in this Project in a participatory status during the life of this AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work.

2.1.2 Nothing in this AGREEMENT shall be deemed to make A/E, or any of A/E's employees or agents, agents or employees of the DISTRICT. A/E shall be an independent contractor 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 the AGREEMENT which may appear to give DISTRICT 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 DISTRICT, only in the results of the work.

2.2 Non-Discrimination

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

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

2.3 Employee Eligibility Verification

2.3.1 A/E warrants that it 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. 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. A/E shall retain all such documentation for all covered employees for the period prescribed by the law.

2.4 Independent Contractor

2.4.1 As referenced in Section D of this AGREEMENT, A/E shall be considered an independent contractor.

2.4.2 Neither A/E, its employees nor anyone working under A/E shall qualify for workers' compensation or other fringe benefits of any kind through DISTRICT.

2.5 Conflict of Interest Contractor Personnel

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

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

3. INSURANCE

3.1.1 Prior to the provision of services under this AGREEMENT, the A/E agrees to purchase all required insurance at A/E's expense, including all endorsements required herein, necessary to satisfy the DISTRICT that the insurance provisions of this AGREEMENT have been complied with. A/E agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the DISTRICT during the entire term of this Agreement. The DISTRICT 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.

3.1.2 A/E shall ensure that all subcontractors performing work on behalf of A/E pursuant to this AGREEMENT shall be covered under A/E's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for A/E. A/E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by DISTRICT from A/E under this AGREEMENT. It is the obligation of A/E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A/E through the entirety of this AGREEMENT for inspection by DISTRICT representative(s) at any reasonable time.

3.1.3 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 zero (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 DISTRICT Executive Office (CEO)/Office of Risk Management upon review of A/E's current audited financial report. A/E shall be responsible for reimbursement of any deductible to the insurer.

3.1.4 If the A/E fails to maintain insurance acceptable to the DISTRICT for the full term of this AGREEMENT, the DISTRICT may terminate this AGREEMENT.

A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with 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**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier). If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.
2. The policy or policies of insurance maintained by the A/E shall provide

the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge 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	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate

B. Required Coverage Forms

1. 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.
2. 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.

C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
 - a. 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 and agents as Additional Insureds.
 - b. A primary non-contributing endorsement evidencing that A/E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents.
3. All insurance policies required by this AGREEMENT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.

4. A/E shall notify DISTRICT in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to DISTRICT. Failure to provide written notice of cancellation may constitute a material breach of the AGREEMENT, upon which the DISTRICT may suspend or terminate this AGREEMENT.
 5. If A/E's Professional Liability policy is a "claims made" policy, A/E shall agree to maintain professional liability coverage for two (2) years following completion of AGREEMENT.
 6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
 7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
 8. If the A/E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
 9. DISTRICT 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 AGREEMENT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect DISTRICT.
 10. DISTRICT 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 DISTRICT incorporating such changes within thirty (30) days of receipt of such notice, this AGREEMENT may be in breach without further notice to A/E, and DISTRICT shall be entitled to all legal remedies.
 11. 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 AGREEMENT, nor act in any way to reduce the policy coverage and limits available from the insurer.
- 3.2.1 If A/E subcontracts portions of the architectural or engineering design PROJECTS/SERVICES to be performed under the terms of this AGREEMENT, A/E shall obtain evidence that such subcontractors have purchased Professional Liability Insurance to the same limits as described in Paragraph M (unless modified by Attachment A) and containing the same clauses as the insurance required of A/E under the terms of this AGREEMENT. Evidence of subcontractor's insurance shall be submitted to

DISTRICT upon request.

4. INDEMNITY/COMPLIANCE

4.1 **A/E shall indemnify, defend with counsel approved in writing by DISTRICT, and hold harmless, the DISTRICT, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against A/E or the DISTRICT 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.**

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

4.3 Indemnification

4.3.1 **A/E agrees to, indemnify, defend with counsel approved in writing by DISTRICT, and hold DISTRICT, the County of Orange ("COUNTY"), their elected and appointed officials, officers, employees, agents and those special districts and agencies which DISTRICT'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 DISTRICT by a court of competent jurisdiction because of the concurrent active negligence of A/E and DISTRICT or DISTRICT INDEMNITEES, A/E and DISTRICT 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.**

4.4 Bills and Liens

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

4.5 Compliance with Laws

- 4.5.1 A/E represents and agrees that services to be provided under this AGREEMENT shall fully comply, at A/E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by DISTRICT in its governmental capacity and all other laws applicable to the PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and accepted by DISTRICT.
- 4.5.2 A/E acknowledges that DISTRICT is relying on A/E for such compliance, and pursuant to the requirements of the indemnification paragraph above, **A/E agrees that it shall defend, indemnify and hold DISTRICT and DISTRICT INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.**

5. TERMINATION

5.1 Termination of Agreement for Cause

- 5.1.1 If A/E breaches any of the covenants or conditions of this AGREEMENT, DISTRICT shall have the right to terminate this AGREEMENT upon ten (10) days written notice prior to the effective day of termination.
- 5.1.2 A/E shall have the opportunity to cure the alleged breach prior to termination.
- 5.1.3 In the event the alleged breach is not cured by A/E prior to termination, all work performed by A/E pursuant to this AGREEMENT, which work has been reduced to plans or other documents, shall be made available to DISTRICT.

5.2 Termination for Convenience

- 5.2.1 Notwithstanding any other provision of the AGREEMENT, DISTRICT may at any time, and without cause, terminate this AGREEMENT in whole or in part, upon not less than seven (7) calendar 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 Work to be terminated.
- 5.2.2 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 DISTRICT.
- 5.2.3 DISTRICT shall pay the A/E for the Work completed prior to the effective date of the termination, and such payment shall be the A/E's sole remedy under this AGREEMENT.
- 5.2.4 Under no circumstances will 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.
- 5.2.5 A/E shall insert in all subcontracts that the subcontractor shall stop work on the date of

and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

5.3 Breach of Contract

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

- a. afford the A/E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this AGREEMENT within which to cure the breach;
- b. discontinue payment to the A/E for and during the period in which the A/E is in breach; and
- c. offset those monies disallowed pursuant to the above, against any monies billed by the A/E but yet unpaid by the DISTRICT.

5.4 Default

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

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

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

5.4.4 Default shall include failure to carry out any of the requirements of this AGREEMENT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the

PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this AGREEMENT.

- 5.4.5 Upon termination of the AGREEMENT with A/E, the DISTRICT may begin negotiations with a third-party A/E to provide goods and/or PROJECTS/SERVICES as specified in this AGREEMENT.
- 5.4.6 The right of either party to terminate this AGREEMENT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

6. MISCELLANEOUS

6.1 Laws to be Observed

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

6.2 Award of Construction Agreement and Other Future Agreements

- 6.2.1 A/E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and DISTRICT policy prohibit, as an impermissible conflict of interest, the award of a contract for the construction of the project(s) on which A/E performed architectural-engineering services under this A/E AGREEMENT. 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 tasks performed by A/E under this AGREEMENT. This prohibition applies also to a subcontractor of or parent company of the firm that performed architectural-engineering tasks under this AGREEMENT.

6.3 Amendments

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

6.4 Successors and Assigns

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

6.5 Entirety

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

6.6 Severability

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

6.7 Binding Obligation

6.7.1 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.

6.8 Governing Law and Venue

6.8.1 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. 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.

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

6.9 Child Support Enforcement Requirements

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

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

6.10 Ownership of Documents

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

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

6.11 Confidentiality

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

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

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

6.12 Publication

6.12.1 No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this AGREEMENT, are to be released by A/E and/or anyone acting under the supervision of A/E to any person, partnership, company, corporation, or agency, without prior written approval by the DISTRICT, except as necessary for the performance of the services of this AGREEMENT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after DISTRICT approval.

6.12.2 The A/E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this AGREEMENT or any subsequent amendment of, or effort under this AGREEMENT. A/E must first obtain review and approval of said media contact from the DISTRICT through the DISTRICT'S Project Manager. Any requests for interviews or information received by the media should be referred directly to the DISTRICT. A/E's are not authorized to serve as a media spokespersons for DISTRICT projects without first obtaining permission from the DISTRICT Project Manager.

6.13 Records and Audit/Inspections

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

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

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

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

6.14 Notices

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

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

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

For A/E:

Name: Steinberg & Associates
Address 1432 Lady Bird Dr.
City Mclean, VA 22101-3227
Attn: Dr. Bory Steinberg
Phone: 703.821.0906
E-mail: nkogon@aol.com

For DISTRICT:

Name: OC Public Works/Infrastructure Programs
Address: 300 N. Flower Street
City: Santa Ana, CA 92703
Attn: Lance Natsuhara
Phone: 714.647.3954

E-mail: lance.natsuhara@ocpw.ocgov.com

cc: OC Public Works Procurement Services
300 N. Flower St., Suite 838
Santa Ana, CA 92703
Attn: Avelino Javier, DPA
Phone: 714.667.9627
E-mail: Avelino.Javier@ocpw.ocgov.com

6.15 Attorney's Fees

6.15.1 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.

6.16 Interpretation

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

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

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

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

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

6.17 Headings

6.17.1 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.

6.18 Acceptance

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

6.19 Changes

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

6.20 Assignment

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

6.21 Changes in Ownership

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

6.22 Force Majeure

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

6.23 Calendar Days

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

6.24 Title to Data

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

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

6.25 Availability of Funds

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

6.26 Contingency of Funding

6.26.1 A/E acknowledges that funding or portions of funding for this AGREEMENT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California or other funding sources to DISTRICT. If such funding and/or appropriations are not forthcoming, or otherwise limited, DISTRICT may immediately terminate or modify this AGREEMENT without penalty.

6.27 Contract Construction

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

6.28 Usage

6.28.1 No guarantee is given by the DISTRICT to A/E regarding usage of this AGREEMENT. The A/E agrees to supply services requested, as needed by the County of Orange, at prices listed in the AGREEMENT, regardless of quantity requested.

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

STEINBERG & ASSOCIATES
a Partnership,

Date: August 4, 2015

By Naomi Kogon-Steinberg
Signature

NAOMI KOGON-STEINBERG, SENIOR PARTNER
Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 1st must be either
Chairman of the Board, President or any Vice President.)*

Date: _____

By _____
Signature

Print Name & Title

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

ORANGE COUNTY FLOOD CONTROL
DISTRICT,
a body corporate and politic.

Date: _____

By _____

Print
Name _____

Title _____

Date: 8-5-15

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

By: [Signature]
Deputy

**ATTACHMENT A
SCOPE OF WORK**

I. BACKGROUND

Steinberg & Associates is a consulting firm that specializes in assisting non-federal sponsors of U.S. Army Corps of Engineers (Corps) with studies and projects to advance local sponsors' interests in its respective federal projects. Steinberg & Associates has provided professional services to the Orange County Flood Control District (OCFCD) intermittently since 1993.

Steinberg & Associates routinely works closely with several federal agencies including the Corps and the Office of Management and Budget (OMB). It assists local agencies, like OCFCD, in the resolution of policy matters, analysis of Corps regulations, and implementation of revisions to existing Corps-OCFCD cost sharing agreements.

II. GENERAL DESCRIPTION OF SERVICES

A/E shall provide the following specialized professional services to Orange County Flood Control District (DISTRICT).

A. Santa Ana River Mainstem Project Including Prado Dam.

1. A/E shall assist Orange County Flood Control District (DISTRICT), in consulting and negotiating with the U.S. Army Corps of Engineers (COE) on the Santa Ana River Mainstem Project Including Prado Dam (collectively referred to hereinafter as "Project") issues, including but not limited to:
 - a. Creation of a procedure for Federal Government to reimburse OCFCD for real property rights acquisition and relocations (LERRDs) after the DISTRICT'S LERRDs expenses exceed 45% of estimated total Prado Dam cost.
 - b. Advocating for federal funding necessary for completion of the Project.
 - c. Assist with DISTRICT'S potential request for a variance related to the Corps' levee vegetation policy.
 - d. Assisting in establishing better communications between the Los Angeles District Santa Ana Project Team and the DISTRICT;
 - e. Assisting in improving the process for obtaining permits for operation and maintenance of the project.
2. A/E shall assist DISTRICT and its Washington, D.C., lobbyist in contacts with the Executive Branch (e.g. Office of Management and Budget and Assistant Secretary of the Army for Civil Works), and in supporting Congressional efforts to obtain adequate construction and LERRDS funding for the Project.

B. Westminster - East Garden Grove Feasibility Study and other Feasibility Studies

1. A/E shall assist DISTRICT and its Washington, D.C., lobbyist in efforts to obtain adequate funds to complete the study as expeditiously as possible.
2. A/E shall participate in meetings with the Corps and DISTRICT on the study to facilitate the prompt resolution of any policy and planning issues that may be identified including coordination with Corps HQ as needed.
3. A/E shall facilitate the review and processing of the feasibility study including the 3X3X3 milestones, Washington level policy reviews, reviews by the Civil Works Review Board and preparation of Reports of the Chief of Engineers.
4. A/E shall assist the Washington D.C. lobbyist in assuring that the projects resulting from the feasibility reports are included in a Water Resources Reform **and Development** Act for authorization.
5. A/E shall participate in potential eventual development of a project partnership agreement (PPA) or similar agreement between Orange County and the Corps of Engineers for any projects resulting from the feasibility studies.

C. Miscellaneous Consultation regarding Corps Policy and Federal Legislative Issues

1. A/E shall assist District staff analyze, evaluate, and monitor Corps policies and federal legislative issues affecting the District. Assistance will be provided, but not limited to, the following:
 - a. Federal Flood Risk Standard Implementation
 - b. Water Resources Reform **and Development** Act
 - c. Clean Water Act '404' Regulatory Permitting
 - d. Corps "PL84-99" Rehabilitation Assistance Program
 - e. Levee Vegetation Policy
 - f. Federal Legislative Activities

D. Procedure For Assignments

1. DIRECTOR shall provide A/E a written description for a proposed assignment, and A/E shall provide an estimated total cost to complete the proposed assignment based on estimated hours and other reimbursable items as may be applicable and pursuant as described in Attachment B, "A/E's Pricing".

2. Upon DIRECTOR'S written approval of an authorized amount for an assignment, A/E shall commence work.

3. In the event that A/E determines that the total cost may exceed the authorized amount for assignment, the A/E shall submit a revised written estimate for approval by the DIRECTOR with an explanation of why costs may exceed the amount previously authorized by the DIRECTOR ("Extra Cost"). A/E understands and agrees that Extra Cost will not be paid unless approved by DIRECTOR in advance of the A/E incurring the Extra Cost.

E. Standards

A/E shall be responsible for submitting all work to DISTRICT in a form which has been thoroughly reviewed and checked for completeness, accuracy and consistency; and any work not meeting this requirement will be returned to A/E for correction at no additional cost to DISTRICT. All work shall be performed in accordance with instruction, criteria and standards set forth by the DIRECTOR.

F. Presentations and Meetings

In addition to other SERVICES, A/E may be required to participate in meeting(s) with DISTRICT staff and representatives, officials and/or other agencies in California and Washington, D.C. A/E shall be responsible for preparation of exhibits and visual aids as requested by the DIRECTOR for meetings and presentation(s). Any recommendations made in the presentation of material shall have prior concurrence from DIRECTOR. A/E shall assist DISTRICT in obtaining approval(s) necessary for the implementation of work resulting from SERVICES, as required by law or deemed necessary by DIRECTOR. It shall be the responsibility of A/E to include reports, agreements or other documents requested by DIRECTOR information or enclosures which an approving agency may require, and to schedule a timely submittal.

G. Reproduction

A/E will be responsible for reproduction necessary for reports studies or analysis prepared by A/E in support of SERVICES provided, to be compensated pursuant to Attachment B.

**ATTACHMENT B
ARCHITECT/ENGINEER'S PRICING**

- I. COMPENSATION:** This is an all-inclusive usage AGREEMENT between DISTRICT and A/E for Specialized Professional Services, as set forth in Attachment A, "Scope of Work".

A/E agrees to accept the specified compensation as set forth in this AGREEMENT as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by A/E of all its duties and obligations hereunder. A/E shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **DISTRICT shall have no obligation to pay any sum in excess of the Total AGREEMENT Amount specified herein below unless authorized by amendment in accordance with Paragraphs 6.3 and 6.19 of the DISTRICT AGREEMENT Terms and Conditions.**

- II. PRICING:** Payment shall be made in accordance with the provisions of this AGREEMENT. Payment shall be as follows:

A. Principal Consultant (Hourly Rate): \$250.00*

*This hourly rate shall include ALL overheads except travel to California. A/E shall not charge for any office expenses, local travel, etc. that would normally fall under the term "Reimbursable Items: as described below. A/E shall only charge actual expenses incurred while on travel to California, subject to DISTRICT approval.

B. TOTAL AGREEMENT AMOUNT FOR **THREE YEARS SHALL NOT EXCEED: \$150,000.00**

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this AGREEMENT. All price decreases will automatically be extended to DISTRICT.

- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A/E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A/E agrees that no price increases shall be passed along to DISTRICT during the term of this AGREEMENT not otherwise specified and provided for within this AGREEMENT.

- V. A/E'S EXPENSE:** A/E will be responsible for all costs related to photo copying, telephone communications and fax communications while on DISTRICT sites during the performance of work and services under this AGREEMENT.

- VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the DISTRICT Project Manager. A/E may be entitled to reimbursement for the following, upon prior approval by DISTRICT:

- 1) The actual costs of special equipment to be rented, leased or purchased by A/E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the DISTRICT Project Manager.

- 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the DISTRICT Project Manager.
- 3) Other actual costs and/or payments specifically approved and authorized in writing by the DISTRICT Project Manager and actually incurred by A/E in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by DISTRICT Project Manager and are subject to the following restrictions:
 - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this AGREEMENT shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A/E's "Home Based" office location and OC Public Works location, as well as mileage within OC Public Works property will not be reimbursed.
 - b) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
 - c) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

All reimbursable expenses must be itemized on A/E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A/E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A/E is responsible for submitting reimbursable invoices in a format that is acceptable to the DISTRICT. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

VII. PAYMENT TERMS: Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the DISTRICT, as applicable. Invoices shall be verified and approved by DISTRICT and subject to routine processing requirements. The responsibility for providing an acceptable invoice to DISTRICT for payment rests with A/E. Incomplete or incorrect invoices are not acceptable and will be returned to the A/E for correction.

Billing shall cover services and/or goods not previously invoiced. The A/E shall reimburse the DISTRICT for any monies paid to the A/E for goods or services not provided or when goods or services do not meet the AGREEMENT requirements.

Payments made by DISTRICT shall not preclude the right of DISTRICT from thereafter disputing any items or services involved or billed under this AGREEMENT and shall not be construed as acceptance of any part of the goods or services.

VIII. INVOICING INSTRUCTIONS: The A/E will provide an invoice on the A/E's letterhead. Each invoice will have a unique number and will include the following information:

- A. A/E's name and address

- B. A/E's remittance address, if different from (A), above
- C. Name of COUNTY agency/department
- D. Delivery/service address
- E. AGREEMENT number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works
Procurement Services
Attn: Accounts Payable
300 N. Flower St., 8th Fl.
Santa Ana, CA 92703

A/E has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the DISTRICT via an EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C
STAFFING PLAN

1. A/E KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Licenses/ Certifications (include license number)
<u>Dr. Bory Steinberg</u>	Principal Consultant	58 years	N/A
<u>Naomi Kogon- Steinberg</u>	Principal Consultant	40 years	N/A
<u>Richard T. Worthington</u>	Principal Consultant	46 years	N/A

A/E understands that the personnel represented as assigned to the AGREEMENT must remain working on the AGREEMENT throughout the duration of the AGREEMENT unless otherwise requested or approved by the DISTRICT. Substitution or addition of A/E's key personnel in any given category or classification shall be allowed only with prior written approval of the DISTRICT Project Manager. *Note: The written approval of substituted A/E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.*

A/E may reserve the right to involve other A/E personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to DISTRICT Project Manager written approval. *Note: The written approval of additional A/E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.* DISTRICT reserves the right to have any A/E personnel removed from providing services to DISTRICT under this AGREEMENT. DISTRICT is not required to provide any reason for the request for removal of any A/E personnel.

2. SUBCONTRACTOR(S) (IF APPLICABLE)

Listed below are subcontractor(s) anticipated by A/E to perform services specified in Attachment A. Substitution or addition of A/E's subcontractors in any given project function shall be allowed only with prior written approval of the DISTRICT Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
<u>N/A</u>		