



(Revised 3/10)

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is entered into as of this ___day of _____, 20__ by and between the **ORANGE COUNTY WATER AUTHORITY**, a public benefit corporation, hereinafter referred to as "OCWA" with principal offices at 124 Main Street, Goshen, New York; and _____, a consulting firm with principal offices at _____, hereinafter referred to as "**CONSULTANT.**"

ARTICLE 1. SCOPE OF WORK

CONSULTANT agrees to perform the services identified in Schedule A (the "Services"), which is attached to and is part of this Agreement. CONSULTANT agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by CONSULTANT that OCWA will not compensate CONSULTANT for any services not within the Scope of Services as specifically identified in Schedule A without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the Executive Director of OCWA (hereinafter "Executive Director").

ARTICLE 2. TERM OF AGREEMENT

CONSULTANT agrees to perform the services beginning _____, and ending _____.

If owing to the actions or neglect of OCWA, CONSULTANT is prevented from completing the Services within the term as aforesaid, CONSULTANT's sole and exclusive remedy is to request that a Change Order or an Addendum to this Agreement be issued by OCWA permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based on written notice only, delivered to the Executive Director promptly, but in no event later than thirty days after the initial occurrence of the event giving rise to such claim and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written Change Order or Addendum to this Agreement signed by the Executive Director. In no event shall OCWA be liable to CONSULTANT, or its subcontractors, agents, or assignees, or any other person or entity for damages arising out of or resulting from any such delays.

ARTICLE 3. COMPENSATION

For satisfactory performance of the Services or as such Services may be modified by mutual written agreement, OCWA agrees to compensate CONSULTANT in accordance with the fees and expenses as stated in Schedule B which is attached to, and is part of this Agreement. CONSULTANT shall submit to OCWA a monthly-itemized invoice for Services rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as OCWA may reasonably require. OCWA will pay the proper amounts due CONSULTANT within sixty (60) days after receipt by OCWA, and will notify CONSULTANT in writing of OCWA'S reasons for objecting to all or any portion of the invoice submitted by CONSULTANT.

ARTICLE 4. FEE GUARANTEE

The fees and the necessary and proper expenses if applicable, as stated in Schedule B of the Agreement shall apply to all Services rendered by CONSULTANT pursuant to the Agreement. Said compensation constitutes the total compensation (subject to authorized adjustment) payable to CONSULTANT for performing the Services. All duties, responsibilities and obligations assigned to or undertaken by CONSULTANT shall be at CONSULTANT's expense without change in the said compensation. A not-to-exceed cost of \$_____ been established as detailed in the scope of Services rendered by CONSULTANT. Costs in excess of such not-to-exceed costs, if any, may not be incurred without prior written authorization of the Executive Director, evidenced only by a written Change Order or Addendum to this Agreement after consultation with the Executive Director. It is specifically agreed to by CONSULTANT that OCWA will not be responsible for any additional costs, or costs in excess of the above-noted not-

to-exceed cost, if OCWA'S authorization by the Executive Director is not given in writing prior to the performance of the Services giving rise to such excess or additional costs.

ARTICLE 5. EXECUTORY CLAUSE

OCWA shall have no liability under this Agreement to CONSULTANT or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 6. PERFORMANCE

CONSULTANT shall perform the Services using CONSULTANT-owned equipment and facilities wherever and whenever possible. In performing the Services, CONSULTANT shall assign qualified personnel and perform such Services in accordance with the professional standards and with the skill, diligence and quality control/quality assurance measures expected of a recognized professional consulting firm performing services of a similar nature. CONSULTANT is hereby given notice that OCWA will be relying upon the accuracy, competence, and completeness of CONSULTANT's Services in using the results of these Services. CONSULTANT shall at all times comply with all applicable laws, ordinances, statutes, rules, and regulations.

ARTICLE 7. CONSULTANT'S REPRESENTATIONS

CONSULTANT represents that it is fully licensed (to the extent required by law), experienced and properly qualified to perform the Services as provided under this Agreement and that it is properly permitted, equipped, organized and financed to perform such Services.

CONSULTANT understands that it may become necessary for OCWA to submit to governmental agencies or to a court of law part or all of the data, analyses and/or conclusions developed as a result of the performance of these Services. CONSULTANT is aware that there are significant penalties for submitting false information to governmental agencies, including the possibility of fines and imprisonment. CONSULTANT is responsible for such penalties if a result of false information submitted to OCWA by CONSULTANT.

ARTICLE 8. PROCUREMENT OF AGREEMENT

CONSULTANT represents and warrants that no person or selling agent has been employed or retained by CONSULTANT to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. CONSULTANT further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. CONSULTANT makes such representations and warranties to induce OCWA to enter into this Agreement and OCWA relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, OCWA shall have the right to annul this Agreement without liability, entitling OCWA to recover all monies paid hereunder and CONSULTANT shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded OCWA for such falsity or breach, not shall it constitute a waiver of OCWA'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 9. CONFLICT OF INTEREST

CONSULTANT represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the Services herein provided. CONSULTANT further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of OCWA, nor any person whose salary is payable, in whole or in part, by OCWA, or any corporation, partnership or association in which such official, officer or employee is, directly or indirectly interested, shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person (1) if required by the Orange County Ethics Law as amended from time to time, to submit a Disclosure Form to the

Orange County Board of Ethics, amends such Disclosure Form to include their interest in this Agreement, or (2) if not required to complete and submit such a Disclosure Form said person must either voluntarily complete and submit said Disclosure Form disclosing their interest in this Agreement or seek a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, OCWA shall have the right to annul this Agreement without liability entitling OCWA to recover all monies paid hereunder and CONSULTANT shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded OCWA for such falsity or breach, nor shall it constitute a waiver of OCWA'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 10. FAIR PRACTICES

CONSULTANT and each person signing on behalf of the CONSULTANT represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

- A. The prices in this Agreement have been arrived at independently by CONSULTANT without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;
- B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by CONSULTANT have not been knowingly disclosed by CONSULTANT prior to the communication of such quote to OCWA or the proposal opening, directly or indirectly, to any other bidder, proposer or to any competitor; and
- C. No attempt has been made or will be made by CONSULTANT to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that CONSULTANT (i) has published price lists, rates, or tariffs covering items being procured (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quote, does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 11. INDEPENDENT CONTRACTOR

In performing the Services and/or supplying goods and incurring expenses under this agreement CONSULTANT shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent of OCWA. As an independent contractor, CONSULTANT shall be solely responsible for determining the means and methods of performing the Services and/or supplying the goods and shall have complete charge and responsibility for CONSULTANT's personnel engaged in the performance of the same.

In accordance with such status as independent contractor, CONSULTANT covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of OCWA, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of OCWA including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 12. ASSIGNMENT

CONSULTANT shall not assign any of its rights, interests or obligations under this Agreement, or subcontract any of the Services to be performed by it under this Agreement, without the prior express written consent of the Executive Director. Any such subcontract, assignment, transfer, conveyance or other disposition without such prior consent shall be void and any services provided thereunder will not be compensated. Any subcontract or assignment properly consented to by OCWA shall be subject to all of the terms and conditions of this Agreement.

Failure of CONSULTANT to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of OCWA and if so terminated, OCWA shall thereupon be relieved and discharged from any further liability and obligation to CONSULTANT, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to OCWA except so much thereof as may be necessary to pay CONSULTANT's employees for past services.

The provisions of this clause shall not hinder, prevent, or affect any assignment by CONSULTANT for the benefit of its creditors made pursuant to the Laws of the State of New York.

This Agreement may be assigned by OCWA to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 13. SUBCONTRACTING

CONSULTANT agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part under this Agreement without the prior written approval of OCWA. Two copies of each such proposed subcontract shall be submitted to OCWA with the CONSULTANT's written request for approval. The said subcontractor approval is required in all cases other than individual employer-employee contracts. All such subcontracts shall contain provisions specifying:

- A. That the work performed by the subcontractor must be in accordance with the terms of the Agreement between OCWA and CONSULTANT;
- B. That nothing contained in the Subcontractor Agreement shall impair the rights of OCWA;
- C. That nothing contained in Subcontractor Agreement or under the agreement between OCWA and the CONSULTANT shall create any contractual relation in law or equity, between the subcontractor and OCWA, and;
- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 14 of the Agreement between OCWA and CONSULTANT.

CONSULTANT agrees that it is fully responsible to OCWA for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, to the same extent as it is for the acts and omissions of persons employed by CONSULTANT.

CONSULTANT shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 14. CONFIDENTIALITY

For purposes of this article:

- A. The term "Confidential Information" as used herein means all material and information, whether written or oral, received by CONSULTANT from or through OCWA or any other person connected with OCWA, or developed, produced, or obtained by CONSULTANT in connection with the performance of Services under this Agreement. Confidential Information shall include, but not be limited to, samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, recommendations, and interpretations and/or comments relating thereto.
- B. The term "CONSULTANT" as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of CONSULTANT.

CONSULTANT shall keep all Confidential Information in a secure location within CONSULTANT's offices. OCWA shall have the right, but not the obligation, to enter CONSULTANT's offices in order to inspect the arrangements of CONSULTANT for keeping Confidential Information secure. No inspection or failure to inspect by OCWA shall relieve CONSULTANT of the responsibility for the performance of its obligations hereunder. CONSULTANT shall hold Confidential Information in trust and confidence, shall not disclose Confidential Information, or any portion thereof, to anyone other than OCWA without the

prior written consent of OCWA, and shall not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with the performance of the Services under this Agreement.

CONSULTANT shall notify OCWA immediately upon receipt by CONSULTANT of any request by anyone other than OCWA for, or any inquiry related to, Confidential Information. CONSULTANT is not prohibited from disclosing portions of Confidential Information if, and to the extent that, (i) such portions have become generally available to the public other than by an act or omission of CONSULTANT, or (ii) disclosure of such portions is required by subpoena, warrant or court order; PROVIDED, however, that in the event anyone other than OCWA requests all or a portion of Confidential Information, CONSULTANT shall oppose such request and cooperate with OCWA in obtaining a protective order or other appropriate remedy unless and until OCWA in writing waives compliance with the provisions of this Article or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or OCWA waives compliance with this Article or determines disclosure is legally required, CONSULTANT shall disclose only such portions of Confidential Information that, in the opinion of OCWA, CONSULTANT is legally required to disclose, and CONSULTANT shall use its best effort as to obtain from the party to whom Confidential Information is disclosed written assurance that confidential treatment will be given to such portions of Confidential Information as are disclosed, to the extent permitted by law.

CONSULTANT shall obtain from each subcontractor of CONSULTANT a confidentiality agreement running to the benefit of OCWA, substantively identical to this Article, prior to the performance of any of the Services in connection with this Agreement by each such subcontractor, and at any time if requested by OCWA, from the officers, directors, agents or employees of CONSULTANT or any such subcontractor.

ARTICLE 15. PUBLICITY

The prior written approval of OCWA is required before CONSULTANT, or any of its employees, servants, agents, assignees or subcontractors, may, at any time, either during or after completion or termination of this Agreement,

make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If CONSULTANT, or any of its employees, servants, agent, assignees or subcontractors, desires to publish a work dealing with any aspect under this agreement, or of the results or accomplishments attained in such performance, they must first obtain the prior written permission of the Executive Director which, unless otherwise agreed to by OCWA in said written permission, will entitle OCWA to have a royalty fee, and a non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use such publication.

ARTICLE 16. OWNERSHIP OF CONFIDENTIAL INFORMATION

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 14, including all copies thereof is the exclusive property of OCWA regardless of whether it is delivered to OCWA. CONSULTANT shall deliver Confidential Information and all copies thereof to OCWA upon request.
- B. To the extent that copies of Confidential Information are authorized by OCWA to be retained by CONSULTANT, they shall be retained in a secure location in CONSULTANT's office for a period of six (6) years after completion of the Services or termination of this Agreement, whichever later occurs, and thereafter disposed of at OCWA'S direction.

ARTICLE 17. BOOKS AND RECORDS

CONSULTANT agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 18. RETENTION OF RECORDS

CONSULTANT agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final

payment or termination of this Agreement, whichever later occurs. COUNTY, or any State and/or Federal auditors, and any other persons duly authorized by OCWA, shall have full access and the right to examine any of said materials during said period.

ARTICLE 19. AUDIT BY THE COUNTY AND OTHERS

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by OCWA. CONSULTANT shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by OCWA so that it may evaluate the reasonableness of the charges, and CONSULTANT shall make its records available to OCWA upon request. All books vouchers, records, reports, canceled checks and any and all similar material may be subject to periodic inspection, review and audit by OCWA, the State of New York, the federal government, and/or other persons duly authorized by OCWA. Such audits may include examination and review of the source and application of all funds whether from OCWA and State, the federal government, private sources or otherwise. CONSULTANT shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 20. INSURANCE

For all of the Services set forth herein and as hereinafter amended, CONSULTANT shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, a Worker's Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to OCWA who have been fully informed as to the nature of the Services to be performed. Except for Worker's Compensation and professional liability, OCWA shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of CONSULTANT

and not those of OCWA. Notwithstanding anything to the contrary in this Agreement, CONSULTANT irrevocably waives all claims against OCWA for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 20. The provisions of insurance by CONSULTANT shall not in any way limit CONSULTANT's liability under this Agreement.

Vendor must supply certificates of Workers' Compensation and/or Disability Benefits Insurance coverage in accordance with New York State statutory requirements. If Vendor is statutorily exempt from New York State Workers' Compensation and/or Disability Benefits Insurance coverage; Vendor shall keep on file with the OCWA with which Vendor contracts, the New York State Affidavit asserting such coverages are not required. Vendor is responsible for updating certificates of coverage or the Affidavit during the contract term to ensure it is effective throughout the contract term.

<u>Type of Coverage</u>	<u>Limits of coverage</u>
Worker's Compensation Statutory	
NYS Disability Statutory	
Employer's liability or similar insurance	\$ 1,000,000 each occurrence
Automobile liability	\$ 1,000,000 aggregate
Bodily Injury	\$ 1,000,000
Property Damage	each occurrence
Comprehensive General	\$ 2,000,000 aggregate
Liability, including Broad form contractual	\$ 1,000,000
Liability, bodily injury and property damage	each occurrence
Professional Liability	\$1,000,000 aggregate
(If commercially available for your profession)	\$1,000,000 each claim

CONSULTANT shall attach to this Agreement, certificates of insurance, evidencing CONSULTANT's compliance with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary

without right of contribution of any other insurance carried by or on behalf of OCWA with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to OCWA, directed to the Executive Director and OCWA shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to CONSULTANT.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

- A. Policy retroactive dates coincide with or precede CONSULTANT's start of the performance of the Services (including subsequent policies purchased as renewals or replacements);
- B. CONSULTANT will maintain similar insurance for at least six (6) years following final acceptance of the Services;
- C. If the insurance is terminated for any reason, CONSULTANT agrees to purchase an unlimited extended reporting provision to report claims arising from the Services performed for OCWA; and
- D. Immediate notice shall be given to OCWA through the Executive Director, of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 21. INDEMNIFICATION

CONSULTANT agrees to defend, indemnify and hold harmless OCWA, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed and/or goods supplied pursuant to this Agreement which OCWA, or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of

CONSULTANT, its Employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against OCWA arising out of the negligence, fault, act or omission of an employee, representative, subcontractor, assignee or agent of CONSULTANT either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of CONSULTANT's negligence, fault, act or omission, then OCWA shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The rights and remedies of OCWA provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 22. RESPONSIBILITY TO CORRECT DEFICIENCIES.

It shall be CONSULTANT's responsibility to correct, in a timely fashion and at CONSULTANT's sole expense any deficiencies in its Services resulting from CONSULTANT's failure to act in accordance with the standards set forth in Article 6 (Performance of Services), provided such deficiencies are reported to CONSULTANT within one hundred and twenty (120) days after completion of the Services. If CONSULTANT fails to correct such deficiencies in a timely and proper manner, OCWA may elect to have others perform such corrections and OCWA may charge any related cost of such corrections to CONSULTANT and/or set-off such amount against any sums otherwise due CONSULTANT. This remedy, if effected, shall not constitute the sole or exclusive remedy afforded OCWA for such deficiencies, nor shall it constitute a waiver of OCWA'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 23. PROTECTION OF COUNTY PROPERTY

CONSULTANT assumes the risk of and shall be responsible for, any loss or damage to COUNTY property, including property and equipment leased by OCWA, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack

of good faith of CONSULTANT, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, against or others engaged by CONSULTANT as an expert CONSULTANT specialist or subcontractor hereunder.

In the event that any such COUNTY property is lost or damaged, except for normal wear and tear, then OCWA shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

CONSULTANT agrees to defend, indemnify and hold OCWA harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such COUNTY property described in this Article.

The rights and remedies of OCWA provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 24. FORCE MAJEURE

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, which is beyond the control of such party, and which by that party's exercise of due diligence and foresight could not reasonably have been avoided

Upon removal of such cause, the party affected shall resume its performance as soon as reasonably possible. CONSULTANT's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability.

If CONSULTANT is so delayed in the timely performance of the Services, CONSULTANT's sole and exclusive remedy is to request that a Change Order or Addendum to this Agreement be issued by OCWA permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based on written notice only, delivered to the Executive Director promptly, but in no event later than thirty days after the initial occurrence of the event giving rise to such claim

and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written Change Order or Addendum to this agreement signed by the Executive Director. In no event shall OCWA be liable to CONSULTANT or its subcontractors, agents, or assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

ARTICLE 25. TERMINATION

OCWA may, by written notice to CONSULTANT effective upon mailing, terminate this Agreement in whole or in part at any time (1) for OCWA'S convenience, (2) upon the failure of CONSULTANT to comply with any of the terms or conditions of this agreement, or (3) upon the CONSULTANT becoming insolvent or bankrupt. Upon termination of this Agreement, the CONSULTANT shall comply with any and all COUNTY closeout procedures, including, but not limited to:

- A. Accounting for and refunding to OCWA within thirty (30) days, any unexpended funds which have been paid to CONSULTANT pursuant to this agreement; and
- B. Furnishing within thirty (30) days an inventory to OCWA of all equipment, appurtenances and property purchased by CONSULTANT through or provided under this Agreement, and carrying out any COUNTY directive concerning the disposition thereof.

In the event OCWA terminates this Agreement, in whole or in part, as provided in this Article, OCWA may procure upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the CONSULTANT shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of OCWA, any services procured by OCWA to complete the Services herein will be charged to CONSULTANT and/or set off against any sums due CONSULTANT.

Notwithstanding any other provisions of this Agreement, CONSULTANT shall not be relieved of liability to OCWA for damages sustained by OCWA by virtue of CONSULTANT's breach of this Agreement or failure to perform in

accordance with applicable standards, and OCWA may withhold payments to CONSULTANT for the purposes of set-off until such time as the exact amount of damages due to OCWA from CONSULTANT is determined.

The rights and remedies of OCWA provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 26. SURVIVING OBLIGATIONS

CONSULTANT's obligations, and those of CONSULTANT's employees, agents, subcontractors, successors and assignees, assumed pursuant to Articles "7" (CONSULTANT's Representations), "14" (Confidentiality), "15" (Publicity), "16" (Ownership of Confidential Information), "17" (Books and Records), "18" (Retention of Records), "19" (Audit by OCWA and Others), "21" (Indemnification), "22" (Responsibility to Correct Deficiencies), and "23" (Protection of County Property) shall survive completion of Services, or the expiration or termination of this Agreement.

ARTICLE 27. WAIVER AND SEVERABILITY

The failure of either party to enforce at any time, any provision of this Agreement does not constitute a waiver of such provision in any way or waive the right of either party at any time to avail itself to such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement shall be considered waived by OCWA unless such waiver is explicitly given in writing by the Executive Director. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or conditions of this Agreement unless expressly stipulated in such waiver as executed by the Executive Director.

The invalidity or invalid application of one provision of this Agreement shall not affect the validity of any other provision, or any other application of any provision of this Agreement.

ARTICLE 28. GENERAL RELEASE

The acceptance by CONSULTANT or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to OCWA from any and all claims of CONSULTANT arising out of the performance of this Agreement.

ARTICLE 29. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by CONSULTANT against any officer, agent or employee of OCWA for or on account of, anything done or omitted in connection with this Agreement.

ARTICLE 30. SET-OFF RIGHTS

OCWA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, OCWA'S right to withhold for the purposes of set-off any monies otherwise due to CONSULTANT (i) under this Agreement, (ii) under any other agreement or contract with OCWA, including any agreement or contract for a term commencing prior to or after the term of this Agreement, or (iii) from OCWA by operation of law. OCWA also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to OCWA for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 31. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the Executive Director but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 32. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. CONSULTANT shall render all services under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such Services are rendered.

ARTICLE 33. ENTIRE AGREEMENT

The rights and obligation of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 34. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of Services in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such services, the Executive Director executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional Services and the amount of compensation and the extension of the time for performance, if any, for any such Services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with all force and effect to the terms and conditions contained in such Addendum or Change Order.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

ORANGE COUNTY WATER AUTHORITY

CONSULTANT

By: _____
DAVID E. CHURCH
EXECUTIVE DIRECTOR

By: _____
NAME:
TITLE:

Date: _____

Date: _____

SCHEDULE A
SCOPE OF SERVICES

SCHEDULE B
FEES AND EXPENSES