

Attachment A

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

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

11 a. **BKF Engineers/Civil & Traffic**

12 b. **VA Consulting/Hydraulics**

13 c. **Kleinfelder/Geotechnical**

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

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

23 **B. PROJECTS/SERVICES**

24 1. Description of PROJECTS/SERVICES

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

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

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

8 2. Design Criteria and Standards

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

11 3. Scheduling

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

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

24 c. A/E shall meet on an "as-needed" basis as determined by
25 DIRECTOR with COUNTY or at least once every two (2) weeks to review progress
26 of work, adherence to progress schedule, coordination of work, scheduling of

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1 seminars, if needed, and to resolve any problems that may develop.

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

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

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

16 **C. Assistance by COUNTY**

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

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

25 **D. Non-Employment of COUNTY Personnel**

26 1. A/E agrees that no full-time, regular employee of COUNTY who

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

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

17 E. Non-Discrimination

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

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

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1 **F. Employee Eligibility Verification**

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

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

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

20 1. If A/E breaches any of the covenants or conditions of this
21 AGREEMENT, COUNTY shall have the right to terminate this AGREEMENT upon ten
22 (10) days written notice prior to the effective day of termination.

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

25 3. In the event the alleged breach is not cured by A/E prior to
26 termination, all work performed by A/E pursuant to this AGREEMENT, which

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1 work has been reduced to plans or other documents, shall be made available
2 to COUNTY.

3 H. Termination for Convenience

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

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

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

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

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

23 I. Term and Maximum Compensation

24 The term of this AGREEMENT is for three (3) years commencing on
25 the date of execution by the Board of Supervisors, with a maximum allowable
26 compensation of four-hundred thousand dollars (\$400,000.00), except as

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1 permitted in Paragraph J below.

2 **J. A/E Compensation and Extra Work**

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

5 1. For completion and approval of all PROJECTS/SERVICES where
6 "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES
7 required by and ordered in writing by DIRECTOR which changes constitute a
8 change in or departure from said approved portions of PROJECTS/SERVICES) is
9 not authorized, compensation including reimbursables shall be described and
10 payable as stipulated in Fee Schedule, herein-after referred to as
11 "Attachment B", attached hereto and incorporated herein by reference. Budget
12 adjustments between specialty support services and associated task items
13 stipulated in Attachment A and "Project Specific Scopes of Work" referenced
14 therein may be made with the approval of the Director, or his designee,
15 including the reduction of the allocated budget for a task in order to
16 augment by this same amount the budget for any other task.

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

18 a. The amount for Extra Work shall be determined using
19 Attachment B. Extra Work shall be required by and ordered in writing by
20 DIRECTOR. DIRECTOR may order Extra Work not to exceed five thousand dollars
21 (\$5,000) for contracts of less than fifty thousand (\$50,000), and may order
22 Extra Work up to ten percent (10%) for contracts not exceeding two hundred
23 fifty thousand dollars (\$250,000). For contracts greater than two hundred
24 fifty thousand dollars (\$250,000), Extra Work shall not exceed twenty-five
25 thousand dollars (\$25,000) plus one percent (1%) of the original contract
26 amount in excess of two hundred fifty thousand dollars (\$250,000). In no

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1 case shall Extra Work exceed one hundred thousand dollars (\$100,000).

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

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

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

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

18 **K. Laws to be Observed**

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

22 **L. Errors and Omissions**

23 1. All PROJECTS/SERVICES submitted by A/E shall be complete and
24 shall be carefully checked prior to submission. A/E understands that
25 COUNTY's checking is discretionary, and A/E shall not assume that COUNTY will
26 discover errors and/or omissions. If COUNTY discovers any errors or

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1 omissions prior to approving A/E's PROJECTS/SERVICES, the PROJECTS/SERVICES
2 will be returned to A/E for correction. Should COUNTY or others discover
3 errors or omissions in the work submitted by A/E after COUNTY's approval
4 thereof, COUNTY's approval of A/E's PROJECTS/SERVICES shall not be used as a
5 defense by A/E.

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

13 **M. Insurance**

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

18 2. A/E agrees to deposit with COUNTY, within fourteen (14)
19 calendar days of the date of execution of this AGREEMENT at 300 North Flower
20 Street, Room No. 551, Santa Ana, CA 92702, certificates of insurance and
21 endorsements (certificates shall be in a form obtainable from COUNTY), in
22 duplicate to satisfy COUNTY, that insurance requirements of this AGREEMENT
23 have been complied with and to keep such insurance in effect and the
24 certificates therefore on deposit with COUNTY, during the entire term of this
25 AGREEMENT.

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

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

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

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

25 7. COUNTY shall notify A/E in writing of changes in the
26 insurance requirements; and if A/E does not deposit copies of acceptable

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1 certificates and endorsements with COUNTY incorporating such changes within
2 fourteen days of receipt of such notices, this AGREEMENT shall be in default
3 without further notice to A/E, and COUNTY, shall be entitled to all legal
4 remedies.

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

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

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

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

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

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

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

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

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

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

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1 **SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED**
2 **BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY**
3 **WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE**
4 **HOLDER NAMED TO THE LEFT.**

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

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

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

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

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

18 **N. Indemnification**

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

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1 court of competent jurisdiction because of the concurrent active negligence
2 of A/E and COUNTY or COUNTY INDEMNITEES, A/E and COUNTY agree that liability
3 will be apportioned as determined by the court. Neither party shall request
4 a jury apportionment. Notwithstanding anything stated above, nothing
5 contained herein shall relieve A/E of any insurance requirements or
6 obligations created elsewhere in this AGREEMENT.

7 O. Award of Construction Agreement and Other Future Contracts

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

18 P. Amendments

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

24 Q. Successors and Assigns

25 The terms and provisions of this AGREEMENT shall be binding upon
26 and inure to the benefit of the parties hereto and their successors and

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1 assigns.

2 **R. Entirety**

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

5 **S. Severability**

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

10 **T. Binding Obligation**

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

15 **U. Governing Law and Venue**

16 1. This AGREEMENT has been negotiated and executed in the
17 State of California and shall be governed by and construed under the
18 laws of the State of California. In the event of any legal action to
19 enforce or interpret this AGREEMENT, the sole and exclusive venue shall
20 be a court of competent jurisdiction located in Orange County,
21 California, and the PARTIES hereto agree to and do hereby submit to the
22 jurisdiction of such court, notwithstanding Code of Civil Procedure,
23 Section 394.

24 2. The PARTIES specifically agree that by soliciting and
25 entering into and performing PROJECTS/SERVICES under this AGREEMENT, the A/E
26 shall be deemed to constitute doing business within Orange County from the

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1 time of solicitation of work, through the period when all PROJECTS/SERVICES
2 under this AGREEMENT is completed, and continuing until the expiration of any
3 applicable limitations period.

4 **V. Child Support Enforcement Requirements**

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

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

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

20 **W. Ownership of Documents**

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

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

8 X. Confidentiality

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

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

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

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1 **Y. Publication**

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

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

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

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

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

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

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

10 **AA. Notices**

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

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

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

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1 For A/E:

2 Name: Biggs Cardosa Associates Inc.
3 Address: 600 S. Main Street, Suite 900
4 City: Orange, CA 92868
5 Attn: Michael Thomas
6 Phone: 714 550-4665
7 E-mail: mthomas@biggscardosa.com
8 Fax: 714 550-7294

9 For COUNTY:

10 Name: OC Public Works/OC Eng./Road
11 Address: 300 N. Flower Street
12 P.O. Box 4048
13 City: Santa Ana, CA 92702-4048
14 Attn: Javid Sharifi, Manager, Road Capital Project
15 Phone: 714 245-4556
16 E-mail: Javid.Sharifi@ocpw.ocgov.com
17 Fax: 714 667-7531

18 **AB. Attorney's Fees**

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

22 **AC. Interpretation**

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

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

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

4. Accordingly, any rule of law (including California Civil Code

Attachment A

1 Section 1654) or legal decision that would require interpretation of any
2 ambiguities in this AGREEMENT against the PARTY that has drafted it is not
3 applicable and is waived.

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

6 **AD. Headings**

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

11 **AE. Acceptance**

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

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

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

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

22 **AG. Remedies Not Exclusive**

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

Attachment A

1 **AH. Independent Contractor**

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

5 **AI. Bills and Liens**

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

13 **AJ. Changes**

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

16 **AK. Assignment**

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

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Attachment A

1 **AL. Changes in Ownership**

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

9 **AM. Force Majeure**

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

17 **AN. Compliance with Laws**

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

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

Attachment A

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

4 AO. Calendar Days

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

7 AP. Breach of Contract

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

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

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

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

19 AQ. Default

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

Attachment A

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

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

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

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

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

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Attachment A

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

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

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

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

15 **AS. Title to Data**

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

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

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Attachment A

1 **AT. Availability of Funds**

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

7 **AU. Contingency of Funding**

8 A/E acknowledges that funding or portions of funding for this
9 AGREEMENT may also be contingent upon receipt of funds from and/or
10 appropriation of funds by the State of California or other funding entity to
11 COUNTY. If such funding and/or appropriations are not forthcoming, or
12 otherwise limited, COUNTY may immediately terminate or modify this AGREEMENT
13 without penalty.

14 **AV. Contract Construction**

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

20 **AW. Waiver of Jury Trial**

21 Each PARTY acknowledges that it is aware of and has had the
22 opportunity to seek advice of counsel of its choice with respect to its
23 rights to trial by jury, and each PARTY, for itself and its successors,
24 creditors, and assigns, does hereby expressly and knowingly waive and release
25 all such rights to trial by jury in any action, proceeding or counterclaim
26 brought by any PARTY hereto against the other (and/or against its officers,

Attachment A

1 directors, employees, agents, or subsidiary or affiliated entities) on or
2 with regard to any matters whatsoever arising out of or in any way connected
3 with this AGREEMENT and/or any other claim of injury or damage.

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Attachment A

ATTACHMENT A SCOPE OF WORK

I. Introduction

OC Public Works, on behalf of the COUNTY is seeking specialty support services to meet workload demands and project scheduling commitments. In order to supplement COUNTY's existing resources, the specialty areas and associated tasks follow.

II. Scope of Work

It is anticipated that there will be several work products, "Project Specific Scopes of Work", resulting from this AGREEMENT. The requested services consist, in general, of preparation of Type Selection Reports, Plans, Special Provisions and Engineer's Estimate (PS&E), and Independent Checks for the construction of new or rehabilitation of existing bridges. Certain related support services as described herein may also be requested. This General Scope of Work exemplifies the types of work that may be required.

A/E tasks may include, but may not be limited to, the following:

A. Type Selection Report

The A/E may be required to prepare engineering studies, traffic safety investigations, and reports, in conformance with industry standards and County of Orange and State Report Format. Deliverables shall include the A/E's reviewing of existing documents, visiting project site, identifying and evaluating conceptual design issues based on existing and ultimate conditions, preparing preliminary calculations and cost estimates, identifying access and detour concepts and determining all major issues affecting budget, construction phasing,

Attachment A

1 prioritization and schedule. Also, the report shall recommend the most
2 practical, feasible and cost effective solution and justify the chosen
3 alternative. To ensure proper project development, A/E shall attend
4 and conduct project status meetings with staff and with others as
5 required to discuss status and/or details of project

6 **B. Plans, Special Provisions & Estimates (PS&E)**

7 The A/E, as directed by COUNTY, shall prepare the plans, special
8 provisions and final design calculations and estimates as necessary for
9 the project in accordance with the following regulatory, highway and
10 bridge standards:

- 11 a. CEQA determination
- 12 b. Regulatory permits
- 13 c. Orange County/OC Public Works Standard Plans (bridge typical
section)
- 14 d. Orange County Highway Design Manual
- 15 e. Caltrans Highway Design Manual (provisions not addressed in
Orange County Highway Design Manual)
- 16 f. California Manual on Uniform Traffic Control Devices (CA
MUTCD)
- 17 g. Orange County Flood Control District Design Manual
- 18 h. AASHTO LRFD Bridge Design Specifications as modified by
Caltrans (Caltrans BDS prior to 2006 adoption of AASHTO LRFD)
- 19 i. Caltrans Seismic Design Criteria
- 20 j. Caltrans Bridge Design Manuals
- 21 k. Caltrans Standard Plans
- 22 l. Caltrans Standard Special Provisions (SSPs) & Reference
Specifications
- 23 m. Caltrans Standard Specifications
- 24 n. Caltrans CAD Standards

25 **C. Utilities:**

26 Unless directed otherwise, County will provide initial and second
(1st and 2nd) utility notice coordination with the utility companies
within limits of project and will determine prior rights and future
needs. A/E shall ensure that project's final design is compatible with
all utilities in project area to be installed, relocated, adjusted or

Attachment A

1 otherwise modified, including adding utility relocation windows in the
2 construction special provisions as necessary. A/E shall also provide
3 utility dispositions identifying existing utility locations above and
4 below ground by station, offset and elevation and describing their
5 disposition. County will issue Notice to Relocate to utilities
6 requiring such.

7 **D. Rights-of-Way:**

8 The A/E will identify R/W needs for the project as necessary
9 including preparing maps, legal descriptions, title reports, final
10 record maps and other necessary documents for the identification of
11 existing and proposed rights-of-way and easements for slope, drainage,
12 access and temporary construction.

13 **E. Bridge Hydraulic Analysis**

14 The A/E, as directed by the COUNTY, may be required to prepare
15 hydraulic analysis in accordance with the "Hydraulic Report" section of
16 the Caltrans Office of Special Funded Projects (OSFP) Information and
17 Procedures Guide.

18 **F. Bridge Scour Study**

19 The A/E, as directed by the COUNTY, may be required to conduct
20 scour study and make recommendations for design of the bridge in
21 accordance with Section 2.6, "Hydrology and Hydraulics," of the AASHTO
22 LRFD.

23 **G. Geotechnical Investigation/Report**

24 The A/E, as directed by the COUNTY, may be required to prepare
25 geotechnical reports in accordance with the "Foundation Report" section
26 of the Caltrans OSFP Information and Procedures Guide.

Attachment A

1 **H. Independent Check**

2 The A/E, as directed by the COUNTY, may be required to conduct an
3 independent check of the bridge in accordance with the "Structure
4 Calculations" section of the Caltrans OSFP Information and Procedures
5 Guide.

6 **I. Minor Roadway/Channel Improvements**

7 The A/E, as directed by the COUNTY, may be required to prepare
8 plans, special provisions and estimates for minor roadway and channel
9 improvements in accordance with local, COUNTY and Caltrans standards,
10 e.g.:

- 11 1) Approach roadways
12 2) Approach railings
13 3) Slope, invert and pier armor to protect bridges against
 stream erosion, scour and sediment transport.

14 **J. Minor Structures**

15 The A/E, as directed by the COUNTY, may be required to prepare
16 plans, special provisions and estimates for minor structures in
17 accordance with local, COUNTY and Caltrans standards, e.g.:

- 18 1) Tieback walls
19 2) MSE walls
20 3) Mortarless concrete block gravity walls
21 4) Overhead & bridge mounted signs and light standards.

22 **K. Traffic Control/Signing & Striping Plan**

23 The A/E, as directed by the COUNTY, may be required to prepare
24 traffic control plans and/or bridge signing and striping plans in
25 accordance with the California Manual on Uniform Traffic Control
26 Devices (CAMUTCD) using local, COUNTY and Caltrans Standard Plans and
Specifications.

Attachment A

1 **L. Construction Support**

2 The A/E, as directed by the COUNTY, may be required to provide
3 construction support services for Bridge projects that include, but are
4 not limited to the following: review and provide design clarification
5 on approved plans and specifications; identify, prepare, and recommend
6 contract change orders; perform cost analysis for unforeseen conditions
7 and extra work; resolve planning, design, construction, and scheduling
8 conflicts/disputes; review shoring design and calculations; coordinate,
9 monitor, and advise on overall project schedule; review and approve
10 water quality practices, traffic control plans, shop drawings and
11 calculations for temporary structures (i.e. trench shoring, false work,
12 and other temporary structural forms); review, evaluate, and analyze
13 potential claims; and assist in community and media relations.

14 **III. Work Requirements**

15 A/E shall be responsible for submitting all work to County in a form
16 which has been thoroughly reviewed and checked for completeness, accuracy and
17 consistency. Any work not meeting this requirement will be returned to A/E.

18 All work shall be performed in accordance with instructions, criteria
19 and standards set forth by the County and Agreement.

20 **IV. A/E's Responsibility**

21 A. A/E shall provide all of the management, personnel, space,
22 equipment and materials requisite to the provision of service.

23 B. A/E shall provide project administrative services as required by
24 County Project Manager, to facilitate effective project
25 coordination, project comments, coordination with County
26 Departments, and reports as required by County Project Manager

Attachment A

- 1 C. All work shall be performed by properly licensed personnel
2 qualified to perform the specific tasks as required by the State
3 of California.
- 4 D. A/E shall furnish the transport, requisite to the performance of
5 service, of all documents to be picked up or delivered to County,
6 and all documents for which transport originates in the office of
7 A/E, and/or in offices of A/E's associations. Transport shall be
8 expedited by one of the following methods:
- 9 1. Prompt hand-carry by staff of A/E or A/E's associates.
 - 10 2. Express Service of a common carrier.
- 11 E. Prior to the commencement of service, on each specific project,
12 A/E shall review the compensation to be provided to A/E as
13 calculated by County. Service shall not proceed until A/E and
14 County concur upon the amount of the compensation. Concurrence
15 may be reached via phone conversation, which shall be followed by
16 written verification.
- 17 F. A/E shall perform the service in accordance with the standards of
18 care and diligence normally practiced by recognized engineering
19 firms or professional firms in the performance of service of a
20 similar nature.
- 21 G. A/E shall correct error(s) in service, with no expense to County,
22 when County shall show that the error(s) is due to failure of A/E
23 to meet the standards required in Paragraph F, preceding.
- 24 H. A/E shall not be responsible for error(s) in service, when A/E
25 shall show that the error(s) is due to the incompleteness, or the
26 inaccuracy, of the information furnished to A/E by County.

Attachment A

1 I. A/E shall provide a project status on a regular (to be determined)
2 basis to the County.

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Attachment A

ATTACHMENT B A/E's Pricing (Fee Schedule)

I. Compensation

This is an all-inclusive usage AGREEMENT between COUNTY and A/E for On-Call Support 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. COUNTY 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 P and AJ of the COUNTY AGREEMENT Terms and Conditions.

II. Pricing

Payments shall be made in accordance with the provisions of this AGREEMENT and upon acceptance of services at the discretion of the COUNTY. Method of payment may be a negotiated lump sum or at an hourly rate with a not-to-exceed amount. Partial payment may be allowed at the COUNTY's discretion. Separate invoices shall be submitted to COUNTY indicating the actual number of hours worked, itemized separately for each Project Specific Scope of Work, including all reimbursable items for which payment is sought (Per Article J of AGREEMENT, budget adjustments between task items may be made with approval of DIRECTOR, or designee). Payment based on hourly rate

Attachment A

1 shall be as follows:

2	Classification/Titles	Hourly Rate
3	<u>Biggs Cardosa Associates Inc.</u>	
4	Principal III	\$263.00
	Principal II	\$231.00
5	Principal I	\$200.00
	Associate	\$179.00
6	Construction Manager	\$179.00
	Engineering Manager	\$151.00
7	Senior Structural Representative	\$151.00
	Project Administrator	\$124.00
8	Senior Engineer	\$134.00
	Structural Representative	\$124.00
9	Project Engineer	\$113.00
	Staff Engineer	\$103.00
10	Assistant Engineer	\$97.00
	Junior Engineer	\$91.00
11	Senior Computer Drafter	\$107.00
	Computer Drafter	\$91.00
12	Junior Computer Drafter	\$81.00
	Secretarial Services	\$76.00
13		
14	<u>BKF Engineers, Inc.</u>	
	ENGINEERING	
15	Principal	\$215.00
	Associate	\$167.00
16	Project Manager	\$163.00
	Engineer IV	\$146.00
17	Engineer III	\$136.00
	Engineer II	\$119.00
18	Engineer I	\$104.00
19	PLANNING	
	Planner I	\$104.00
20	Planner II	\$119.00
	Planner III	\$135.00
21		
	SURVEYING	
22	Associate	\$167.00
	Project Manager	\$163.00
23	Surveyor IV	\$146.00
	Surveyor III	\$136.00
24	Surveyor II	\$119.00
	Surveyor I,	\$104.00
25	Survey Party Chief	\$131.00
	Survey Chainman	\$103.00
26	Apprentice IV	\$96.00

Attachment A

County of Orange, OC Public Works

Agreement No. D11-081
Revised 06-29-11

1	Apprentice III	\$85.00
	Apprentice II	\$75.00
2	Apprentice I	\$54.00
	Instrumentman	\$115.00
3		
	DESIGN AND DRAFTING	
4	Technician III	\$116.00
	Technician II	\$107.00
5	Technician I	\$99.00
	Drafter IV	\$103.00
6	Drafter III	\$94.00
	Drafter II	\$85.00
7	Drafter I	\$77.00
	Student Engineer/Surveyor	\$55.00
8		
	CONSTRUCTION ADMINISTRATION	
9	Senior Construction Administrator	\$155.00
	Resident Engineer	\$113.00
10	Field Engineer III	\$136.00
	Field Engineer II	\$119.00
11	Field Engineer I	\$104.00
12		
	SERVICES	
	Project Assistant	\$67.00
13	Clerical/Administrative Assistant	\$57.00
14		
	<u>VA Consulting</u>	
15		
	CIVIL ENGINEERING AND PLANNING SERVICES	
	President/Division President/Division Manager	\$199.00
16	Sr. Vice President/Vice President/Exec. Director	\$183.00
	Director	\$178.00
17	Senior Project Manager	\$173.00
	Project Manager	\$168.00
18	Assistant Project Manager	\$162.00
	Senior Project Engineer	
19	/Senior Design Supervisor/Senior Planner	\$157.00
	Project Engineer/Design Supervisor	\$152.00
20	Senior Design Engineer/Senior Designer	\$136.00
	Design Engineer/Planner	\$131.00
21	Designer	\$120.00
	Assistant Engineer/Assistant Planner	\$110.00
22	Research and Processing Coordinator	\$105.00
	Senior CADD Technician	\$105.00
23	Junior Engineer	\$89.00
	CADD Technician	\$89.00
24	Engineering Intern	\$73.00
	Office Support/Clerical	\$73.00
25	///	
26	///	

Attachment A

County of Orange, OC Public Works

Agreement No. D11-081
Revised 06-29-11

1	FIELD SURVEY AND MAPPING SERVICES	
	Director of Survey and Mapping	\$178.00
2	Manager of Field Survey	\$155.00
	Survey and Mapping Associate	\$112.00
3	Survey and Mapping Technician	\$84.00
	3-Man GPS Crew	\$262.00
4	2-Man GPS Crew	\$231.00
	1-Man GPS Crew	\$195.00

5

Kleinfelder, Inc.

6

	Professional	\$138.00
7	Assistant Project Manager	\$160.00
	Staff Professional I	\$170.00
8	Staff Professional II	\$180.00
	Project Professional / Project Manager	\$190.00
9	Senior Professional / Senior Project Manager	\$215.00
	Principal / Principal Professional	\$240.00
10	Expert Witness	\$315.00
	Administrative I	\$95.00
11	Project Administrator	\$110.00
	Technician I	\$100.00
12	Technician II	\$100.00
	Technician III	\$100.00
13	Technician IV	\$100.00
	Senior Technician	\$100.00
14	Supervisory Technician	\$110.00
	CADD Operator	\$125.00

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16 **III Price Increase/Decrease**

17 No price increases will be permitted during the first period of the
18 AGREEMENT. All price decreases will automatically be extended to COUNTY.
19 COUNTY requires bona fide proof of cost increases on agreements prior to any
20 price adjustment. A minimum of ninety (90) days advance notice in writing is
21 required to secure such adjustment. No retroactive price adjustments will be
22 considered. COUNTY may enforce, adjust, negotiate, or cancel escalating price
23 agreements or take any other action it deems appropriate, as it sees fit.
24 The net dollar amount of profit will remain firm during the period of the
25 AGREEMENT. Adjustments increasing the A/E's profit will not be allowed.

26 ///

Attachment A

1 **IV. Firm Discount and Pricing Structure**

2 A/E guarantees that prices quoted are equal to or less than prices
3 quoted to any other local, State or Federal government entity for services of
4 equal or lesser scope. A/E agrees that no price increases shall be passed
5 along to COUNTY during the term of this AGREEMENT not otherwise specified and
6 provided for within this AGREEMENT.

7 **V. A/E's Expense**

8 A/E will be responsible for all costs related to photo copying,
9 telephone communications and fax communications while on COUNTY sites during
10 the performance of work and services under this AGREEMENT.

11 **VI. Reimbursable Items**

12 Reimbursable items are non-salary items that are not included in the
13 Scope of Work but necessary for completion of the work and must be authorized
14 in advance by the COUNTY. Invoices for reimbursable items shall be
15 identified as such and include copies of receipts or other proof of payment
16 as determined by the COUNTY. Reimbursable items shall be charged at cost.

17 **VII. Payment Terms**

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

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Attachment A

1 Billing shall cover services and/or goods not previously invoiced. The
2 A/E shall reimburse the COUNTY, as applicable, for any monies paid to the A/E
3 for goods or services not provided or when goods or services do not meet the
4 AGREEMENT requirements.

5 Payments made by COUNTY, as applicable, shall not preclude the right of
6 COUNTY, as applicable, from thereafter disputing any items or services
7 involved or billed under this AGREEMENT and shall not be construed as
8 acceptance of any part of the goods or services.

9 VIII. Invoicing Instructions

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

- 12 a. A/E's name and address
- 13 b. A/E's remittance address, if different from (a), above
- 14 c. Name of COUNTY agency/department
- 15 d. Delivery/service address
- 16 e. AGREEMENT number
- 17 f. Service Date
- 18 g. Description of Services
- 19 h. Total
- 20 i. Taxpayer ID number

21 Invoices and support documentation are to be forwarded to:

22 OC Public Works/Administration Services
23 Attn: Accounting Services
24 300 N Flower Street, 8th Fl.
25 P.O. Box 4048
26 Santa Ana, CA 92702-4048

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Attachment A

ATTACHMENT C Staffing Plan

I. A/E Key Personnel

Name	Classification/ Designation	Licenses Cert. (Number)	Yr(s) of Exp.	Length with Firm
Biggs Cardoso Associates Inc.				
Michael Thomas	Project Manager	SE 4676	21	21
		CE 49793		
Geoffrey Dizon	Project Engineer	CE 62484	11	11
BKF Engineers				
Chris Rideout	Civil PM	CE 44922	25	8
VA Consulting				
Dan Villines	Hydraulic PM	CE 55210	20	8
		GE 2278		
Kleinfelder				
Scott Lawson	Geotechnical PM	GE 2829	11	11
		CE 65756		

A/E understands that the individuals represented as assigned to the PROJECT must remain working on the PROJECT throughout the duration of the PROJECT unless otherwise requested or approved by COUNTY, as applicable. Substitution of A/E's Key Personnel shall be allowed only with prior written approval of COUNTY's Project Manager

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 COUNTY, as applicable, written approval. COUNTY, as applicable, reserves the right to have any of A/E personnel removed from providing services to COUNTY, as applicable, under this AGREEMENT. COUNTY, as applicable, is not required to provide any reason

Attachment A

1 for the request for removal of any A/E personnel.

2 **II. Subcontractor(s)**

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

Company Name & Address	Contact Name and Telephone Number	Project Function
BKF Engineers 600 S. Main Street, Suite 920 Orange, CA 92868	Chris Rideout 714 415-0500	Civil
VA Consulting 6400 Oak Canyon, Suite 150 Irvine, CA 92618	Dan Villines 949 474-1400	Hydraulics
Kleinfelder, Inc. 2 Ada, Suite 250 Irvine, CA 92618	Scott Lawson 949 727-4466	Geotechnical

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Attachment A

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Exhibit 1
Orange County Child Support Enforcement
Certification Requirements

In order to comply with child support enforcement requirements of Orange County, within ten (10) days of award of contract, the successful contractor must furnish to the Contract Administrator, Purchasing Agent or the agency/department Deputy Purchasing Agent:

- A. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
- C. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

The certifications will be stated as follows:

"I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract _____ with Orange County. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 10 calendar days of notice from the County shall constitute grounds for termination of the contract."

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

Attachment A

1 those agencies.

2 Failure of the contractor to timely submit the data and/or
3 certifications required above or to comply with all federal and state
4 reporting requirements for child support enforcement or to comply with all
5 lawfully served Wage and Earnings Assignment Orders and Notices of Assignment
6 shall constitute a material breach of the contract. Failure to cure such
7 breach within 10 calendar days of notice from the County shall constitute
8 grounds for termination of the contract.

9 After notification of award, the successful contractor may use the
10 forms supplied herein, to furnish required information listed above.

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Attachment A

ORANGE COUNTY CHILD SUPPORT ENFORCEMENT CERTIFICATION REQUIREMENTS

INSTRUCTIONS:

UPON NOTIFICATION OF CONTRACT AWARD/REQUEST FOR RENEWAL, COMPLETE **PART I**
AND **PART II**.

PART 1

- A. In case of an individual contractor, provide:
His/her name, date of birth, Social Security number, and residence
address:
- B. In the case of contractor doing business in a form other than as an
individual, provide:
The name, date of birth, Social Security number, and residence address
of each individual who owns an interest of 10 percent or more in the
contracting entity; OR
- C. *If your firm is a non-profit entity please indicate: "N/A, Non-Profit
Organization" OR If no single person owns an interest of 10 percent or
more please state this fact below.

(Please note: Part II "Certification" must also be signed and returned)

1. **Name:** _____
D.O.B. _____
SSN No: _____
Residence Address: _____
2. **Name:** _____
D.O.B. _____
SSN No: _____
Residence Address: _____

PART II

CERTIFICATION (PART I MUST ALSO BE COMPLETED)

I certify that _____ is in full compliance with all
applicable Federal and State reporting requirements regarding its employees
and with all lawfully served Wage and Earnings Assignment Orders and
Notices of Assignments and will continue to be in compliance throughout the
term of Contract Number: _____ with the County of Orange.
I understand that failure to comply shall constitute a material breach of
the contract and the failure to cure such breach within 10 calendar days of
notice from the County shall constitute grounds for termination of the
contract.

AUTHORIZED SIGNATURE _____

PRINTED NAME _____

TITLE _____

Attachment A

Exhibit 2

EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, Orange County is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a Contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements, County procedures for contracting with independent contractors mandate that the following

Attachment A

1 information be completed and forwarded to the contracting agency/department
2 immediately upon request:

- 3 First name, middle initial and last name
- 4 Social Security Number
- 5 Address
- 6 Start and expiration dates of Contract
- 7 Amount of Contract

Part I

First Name _____	Middle Initial _____	Last Name _____
SSN# _____	Date of Birth _____	
Address _____		
Contract No. _____		
Start Date _____	Expiration Date _____	
Dollar value of contract _____		

Part II

CERTIFICATION (PART I must also be completed)

15 I certify that _____ is in full compliance with
16 all applicable Federal and State reporting requirements regarding its
17 employees and with all lawfully served Wage and Earnings Assignment
18 Orders and Notices of Assignments and will continue to be in compliance
19 throughout the term of Contract Number: _____ with the County
20 of Orange.

I understand that failure to comply shall constitute a material breach
of the contract and the failure to cure such breach within 10 calendar
days of notice from the County shall constitute grounds for termination
of the contract.

21 AUTHORIZED SIGNATURE _____

22 PRINTED NAME _____

23 TITLE _____

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