

Attachment C

1 A G R E E M E N T
2 **THIS AGREEMENT**, hereinafter referred to as "**AGREEMENT**," for purposes of
3 identification hereby numbered **D11-085**, and dated _____ day of
4 _____, 20_____ is

5 **BY AND AMONGST**

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

8 **AND** PENCO Engineering Inc., a California
9 Corporation, hereinafter referred to as
"A/E",

10 which are sometimes individually referred to as "PARTY" or collectively
11 referred to as "PARTIES"

12 **RECITALS**

13 **WHEREAS**, COUNTY requires professional services to accomplish projects
14 and/or services ("PROJECTS/SERVICES") as described in Scope Of Work for "On-
15 call" Architect-Engineer Services hereinafter referred to as "Attachment A,"
16 attached hereto and incorporated herein by reference; and

17 **WHEREAS**, A/E is a firm whose principals are, as required by law,
18 registered by the State of California for the practice of Civil Engineering,
19 Mechanical Engineering, Electrical Engineering, Corrosion Engineering,
20 Architecture, Landscape Architecture, Geotechnical Engineering, Traffic
21 Engineering, Land Surveying or Environmental Services.

22 **NOW, THEREFORE, IT IS AGREED** by and amongst the parties hereto as
23 follows:

24 **A. Retainer**

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

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

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. **UltraSystems/Environmental**
- 12 b. **Austin Foust Associates, Inc./Traffic**
- 13 c. **Utility Specialists/Utilities**
- 14 d. **Ima Design Group/Landscape**
- 15 e. **Ninyo & Moore/Geotechnical**

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

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

25 **B. PROJECTS/SERVICES**

26 1. Description of PROJECTS/SERVICES

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

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

10 2. Design Criteria and Standards

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

13 3. Scheduling

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

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

26 c. A/E shall meet on an "as-needed" basis as determined by

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1 DIRECTOR with COUNTY or at least once every two (2) weeks to review progress
2 of work, adherence to progress schedule, coordination of work, scheduling of
3 seminars, if needed, and to resolve any problems that may develop.

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

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

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

18 C. Assistance by COUNTY

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

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

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

2 1. A/E agrees that no full-time, regular employee of COUNTY who
3 is involved in this Project shall be given or offered employment by A/E in a
4 participatory status during the life of this AGREEMENT regardless of the
5 assignments said employee may be given or the days or hours employee may
6 work. By accepting this AGREEMENT, A/E agrees not to negotiate any
7 employment opportunity with any COUNTY full-time, regular employee who is
8 involved in this Project in professional classifications of the same skills
9 required for the performance of this AGREEMENT.

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

19 **E. Non-Discrimination**

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

26 2. A/E acknowledges that a violation of this provision shall

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1 subject A/E to all the penalties imposed for a violation of the California
2 Labor Code.

3 **F. Employee Eligibility Verification**

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

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

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

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

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

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

5 **H. Termination for Convenience**

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

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

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

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

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

25 **I. Term and Maximum Compensation**

26 The term of this AGREEMENT is for three (3) years commencing on

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1 the date of execution by the Board of Supervisors, with a maximum allowable
2 compensation of three-hundred thousand dollars (\$300,000.00), except as
3 permitted in Paragraph J below.

4 J. A/E Compensation and Extra Work

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

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

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

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

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

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

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

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

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

20 **K. Laws to be Observed**

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

24 **L. Errors and Omissions**

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

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

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

15 M. Insurance

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

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

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1 AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

7
8
9
10
11 14. A/E's insurance policy(ies) shall contain the following
12 additional clauses or clauses shall be added as an endorsement to the policy:

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

19 b. A clause stating, "This insurance shall not be
20 cancelled, reduced in scope or coverage, changed or amended until after
21 thirty (30) days written notice has been given to: DIRECTOR, Orange County
22 Public Works, at 300 North Flower Street, Santa Ana, CA 92703-5000; and,
23 Orange County Risk Management Services, P.O. Box 327, Santa Ana, CA 92702."
24 This shall be evidenced by an endorsement separate from the Certificate of
25 Insurance. In addition, the cancellation clause must include language as
26 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.

24 **Y. Publication**

25 1. No copies of sketches, schedules, written documents, computer
26 based data, photographs, maps or graphs, including graphic art work,

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1 resulting from performance or prepared in connection with this AGREEMENT, are
2 to be released by A/E and/or anyone acting under the supervision of A/E to
3 any person, partnership, company, corporation, or agency, without prior
4 written approval by the COUNTY, except as necessary for the performance of
5 the services of this AGREEMENT. All press contacts, including graphic
6 display information to be published in newspapers, magazines, etc., are to be
7 administered only after COUNTY approval.

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

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

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

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

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

Attachment C

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

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

7 **AA. Notices**

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

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

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

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Attachment C

1 For A/E:

2 Name: PENCO Engineering Inc.
3 Address: One Technology Park, Bldg. J-725
4 City: Irvine, CA 92618
5 Attn: Carlos Pineda
6 Phone: 949 753-8111
7 E-mail: cpineda@pencoeng.com
8 Fax: 949 753-0775

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.

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

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

7 **AD. Headings**

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

12 **AE. Acceptance**

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

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

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

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

23 **AG. Remedies Not Exclusive**

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

Attachment C

1 resort by either party to any other remedies provided by law.

2 **AH. Independent Contractor**

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

6 **AI. Bills and Liens**

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

14 **AJ. Changes**

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

17 **AK. Assignment**

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

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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

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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 C

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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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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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,

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


PENCO Engineering Inc.,
a California Corporation,

3
4
5 Date: 12/12/11

By 
George A. Jurica, President/Owner
Print Name & Title

7
8 (If a corporation, the document must be signed by two corporate officers.
9 The 1st must be either Chairman of the Board, President or any Vice
10 President.)

11 Date: 12/12/11

12 By 
13 Gigi Huitron, CFO/Controller
14 Print Name & Title

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

18 COUNTY OF ORANGE,
19 a political subdivision of the State of
20 California

21 Date: _____

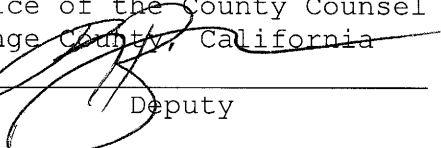
22 By _____
23 Chair of the Board of Supervisors
24 Orange County, CA

Signed and certified that a copy of this
document has been delivered to the Chair of
the Board per G.C. Sec 25103, Reso 79-1535

25 Attest:

26 Date: _____

_____ ~~Darlene J. Bloom~~
Clerk of the Board of Supervisors
County of Orange, California

27 Date: 1/5/12
28 APPROVED AS TO FORM
29 Office of the County Counsel
30 Orange County, California
By: 
Deputy

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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 Project Reports, Plans, Special Provisions and Engineer's Estimate (PS&E), and Plans Examination for the construction of new or rehabilitation of existing roadways. 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. Engineering Studies/Project Report

The A/E may be required to prepare engineering studies, traffic safety investigations, and project reports, in conformance with industry standards and County of Orange Project 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, prioritization and schedule. Also, the report shall recommend

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

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

6 The A/E, as directed by COUNTY, shall prepare the plans, special
7 provisions and final design calculations and estimates as necessary for
8 the project. Engineering design and drafting shall be in accordance
9 with instructions, criteria and standards set forth by the Director of
10 OC Public Works or Director's designee. Also, A/E shall attend and
11 conduct project status meetings with staff as directed and with others
12 as required to discuss status and/or other details of project. Typical
13 items during this phase include, but are not limited to, the following:

14 1. Utilities:

15 Unless directed otherwise, County will provide initial
16 and second (1st and 2nd) utility notice coordination with the
17 utility companies within limits of project and will determine
18 prior rights and future needs. A/E shall ensure that
19 project's final design is compatible with all utilities in
20 project area to be installed, relocated, adjusted or
21 otherwise modified, including adding utility relocation
22 windows in the construction special provisions as necessary.
23 A/E shall also provide utility dispositions identifying
24 existing utility locations above and below ground by station,
25 offset and elevation and describing their disposition. County
26 will issue Notice to Relocate to utilities requiring such.

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1 2. Rights-of-Way:

2 The A/E will identify R/W needs for the project as
3 necessary including preparing maps, legal descriptions, title
4 reports, final record maps and other necessary documents for
5 the identification of existing and proposed rights-of-way and
6 easements for slope, drainage, access and temporary
7 construction.

8 3. Civil Design:

9 The A/E shall perform civil design for new and existing
10 roads as required, in conformance to County Standards.

11 4. Geotechnical:

12 If needed, the A/E shall perform geotechnical
13 investigations and incorporate any findings and
14 recommendations into the final design.

15 5. Structural Design:

16 The A/E shall perform structural design, calculations
17 and drawings for retaining walls, box culverts, etc. All
18 structural calculations shall conform to the OC Public Works
19 standards and guidelines.

20 6. Hydrology/Hydraulics:

21 The A/E shall perform a complete hydrologic evaluation
22 of all contributing drainage areas, with recommendations on
23 structures and pipe sizes for interim and ultimate
24 conditions. The evaluation shall include a determination of
25 street and system capacity, and catch basin location, lengths
26 and hydraulic analysis.

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1 7. Traffic/Transportation:

2 The A/E as directed may prepare Traffic Analysis,
3 Traffic Signal, Striping, Signing and Detour Plans for the
4 project.

5 8. Environmental:

6 Pertinent items from certified EIRs and/or any
7 Mitigation Program that have an impact on the final design
8 shall be evaluated and incorporated into the final design. If
9 needed, The A/E shall perform necessary environmental
10 assessments and include the findings in the project.

11 9. Landscaping:

12 The A/E as directed shall plan, design and incorporate
13 into the plans and specifications all landscape and
14 irrigation services necessary for road projects such as
15 medians, side slopes, replacement of existing vegetation,
16 etc.

17 10. Drafting:

18 All drafting of plans shall be performed in accordance
19 with Orange County drafting standards, format and
20 conventions. Final Plans shall be computer-drafted to be
21 compatible with County's Microstation computer system for
22 standard 22" X 34" plan. The final plan submittal shall
23 include one set of Engineer-signed hard copy plans on mylar
24 sheets, and one full set of Microstation compatible computer
25 disks of the plan sheets. Final drawings shall be stamped and
26 signed by California registered professional engineers.

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1 11. Quantity Calculations:

2 All quantities shown for bid items used in the
3 construction contract documents and cost estimate shall
4 include easy to follow backup calculations demonstrating how
5 the quantities were determined. Quantity calculations shall
6 be accompanied with sketches, diagrams and dimensions
7 necessary to allow them to be independently used by field
8 inspectors.

9 12. Cost Estimate:

10 The A/E shall prepare a detailed Cost Estimate using
11 County format, which includes all bid items described within
12 the Special Provisions. The estimate shall use the same
13 nomenclature and units of pay as indicated in the Special
14 Provisions. The estimate shall reflect current bid prices
15 based on similar projects and the design engineer's own
16 judgment.

17 13. Special Provisions:

18 The A/E shall use the OC Public Works Specifications
19 Library and "Boiler Plates" (to be provided), and shall
20 prepare the project's contract special provisions
21 documentation to conform to the current County format.

22 **C. Plans Examination**

23 The A/E as required may provide a third party, partial or complete
24 review services for processing final bid packages for County's road
25 improvement projects. The package, in general, is comprised of
26 engineering plans, quantity calculations, cost estimates, design,

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1 special provisions, permits, right-of-way documents, environmental
2 document mitigation measures and survey documents etc. A/E shall
3 prepare written evaluation of the package and identify any errors,
4 omissions, or inconsistencies noted. Also, the A/E shall attend and
5 conduct project status meetings with staff as directed and with others
6 as required to discuss status and/or other details of project's review.

7 **D. Support Services**

8 The A/E as required will prepare and process related services to
9 either accomplish the above tasks or as stand-alone services. This may
10 include, but may not be limited to, the following services.

11 1. Survey:

12 Road projects may require surveying of existing
13 topography and locating and identifying existing facilities.
14 Professional surveying services include a survey report and
15 electronic files that can be used for design purposes. The
16 requested survey may include topographic survey, cross
17 section, aerial photographs, etc.

18 2. Geotechnical:

19 The A/E as required shall review past pavement, soil
20 and geology investigations, discuss past findings as
21 impacting the subject roadway project, and independently
22 perform design-needed geotechnical services including
23 development and implementation of a field investigation plan
24 involving any field data collection as deemed necessary,
25 development of a laboratory testing program to conduct soils
26 surface and subsurface characterization tests as applicable

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1 to the needs of the project, development of seismic analysis
2 and design criteria in accordance with code requirements,
3 development of pavement condition studies to provide
4 recommendations concerning life cycle costs and
5 rehabilitation/reconstruction methods, and recommendations
6 for the design of foundations, embankment and excavation
7 procedures, settlement analysis, lateral, active, and passive
8 earth pressures, de-watering, landslide mapping, slope
9 stabilization, soil corrosion, erosion, sedimentation control
10 and other applicable design criteria as deemed necessary.

11 3. Traffic/Transportation Reports:

12 The A/E as required will prepare under the supervision
13 of a Registered Traffic Engineer by the State of California a
14 report typically divided into the following sections:

- 15 a. Project Description
- 16 b. Existing Conditions
- 17 c. Interim Conditions
- 18 d. Future Conditions
- 19 e. Project Trip Generation Intersection Analysis
- 20 f. Summary of Impacts
- 21 g. Accident Evaluation
- 22 h. Warrant Analysis
- 23 i. Mitigation(s)

24 The report shall, in general, include a discussion of
25 the following:

- 26 a. Link analysis of roadway(s) using existing Average Daily Traffic (ADT) values, projected ADT, County of Orange's current Traffic Flow Map and/or approved A/E analytical methods to establish widening/upgrade needs.
- b. Intersection analysis using OCTA and County approved ICU methodology, or approved HCM methodology, to identify peak periods, existing and projected Levels of Service (LOS) and need for

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1 turn lanes and interim roadways and their design
2 if needed.

- 3 c. Signal phasing: An analysis done for intersections
4 with split signal phasing or intersections with
5 optional through/left or through/right lanes to
6 reflect the true distribution of the approach
7 traffic into these optional lanes.
- 8 d. Adverse impacts created by the project and a
9 detailed description of mitigation measures
10 proposed by the project and a rough cost estimate
11 of all the recommended mitigation measures.
- 12 e. Methodologies to reduce the number of severity of
13 accidents.
- 14 f. Warrant analysis of proposed traffic control
15 devices.

9 4. Environmental:

10 The A/E shall identify project impacts and describe
11 them in the associated initial studies for OC
12 Planning/Environmental Planning Services to review and make
13 recommendations. A/E may then be requested to prepare the
14 appropriate environmental documentation as listed below and
15 consistent with the requirements of the California
16 Environmental Quality Act (CEQA), National Environmental
17 Policy Act (NEPA) and/or other applicable requirements.

- 18 1. Environmental Site Assessments (ESA) Phase I
- 19 2. Categorical Exemption
- 20 3. Negative Declaration (ND)
- 21 4. Negative Declaration with conditions
- 22 5. Focused Environmental Impact Report
- 23 6. Environmental Impact Report (EIR)
- 24 7. Federal Environmental Impact Statement (EIS)
- 25 8. Acoustics (noise analysis/study)
- 26 9. Other as needed

23 5. Permits/Approvals:

24 The A/E services may be required to coordinate design
25 efforts with the affected entities, agencies and/or property
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1 owners. Identification, processing and approval of permits
2 may include, but not be limited to, the following:

- 3 a. State Fish and Game
- 4 b. Regional Water Quality Control Board
- 5 c. Coastal Commission
- 6 d. State Lands Commission
- 7 e. Caltrans
- 8 f. Coast Guard
- 9 g. Corps of Engineers
- 10 h. City(ies)/County(ies)
- 11 i. Railroads
- 12 j. Air Quality Management District (AQMD)
- 13 k. Other

14 6. Construction Support:

15 The A/E may be required to provide construction support
16 services for Road projects that include, but are not limited
17 to the following: review and provide design clarification on
18 approved plans and specifications; identify, prepare, and
19 recommend contract change orders; perform cost analysis for
20 unforeseen conditions and extra work; resolve planning,
21 design, construction, and scheduling conflicts/disputes;
22 review shoring design and calculations; coordinate, monitor,
23 and advise on overall project schedule; review and approve
24 water quality practices, traffic control plans, shop drawings
25 and calculations for temporary structures (i.e. trench
26 shoring, false work, and other temporary structural forms);
review, evaluate, and analyze potential claims; and assist in
community and media relations.

27 **III. Work Requirements**

28 A/E shall be responsible for submitting all work to County in a form
29 which has been thoroughly reviewed and checked for completeness, accuracy and

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1 consistency. Any work not meeting this requirement will be returned to A/E.

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

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

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

7 B. A/E shall provide project administrative services as required by
8 County Project Manager, to facilitate effective project
9 coordination, project comments, coordination with County
10 Departments, and reports as required by County Project Manager

11 C. All work shall be performed by properly licensed personnel
12 qualified to perform the specific tasks as required by the State
13 of California.

14 D. A/E shall furnish the transport, requisite to the performance of
15 service, of all documents to be picked up or delivered to County,
16 and all documents for which transport originates in the office of
17 A/E, and/or in offices of A/E's associations. Transport shall be
18 expedited by one of the following methods:

- 19 1. Prompt hand-carry by staff of A/E or A/E's associates.
- 20 2. Express Service of a common carrier.

21 E. Prior to the commencement of service, on each specific project,
22 A/E shall review the compensation to be provided to A/E as
23 calculated by County. Service shall not proceed until A/E and
24 County concur upon the amount of the compensation. Concurrence
25 may be reached via phone conversation, which shall be followed by
26 written verification.

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- 1 F. A/E shall perform the service in accordance with the standards of
- 2 care and diligence normally practiced by recognized engineering
- 3 firms or professional firms in the performance of service of a
- 4 similar nature.
- 5 G. A/E shall correct error(s) in service, with no expense to County,
- 6 when County shall show that the error(s) is due to failure of A/E
- 7 to meet the standards required in Paragraph F, preceding.
- 8 H. A/E shall not be responsible for error(s) in service, when A/E
- 9 shall show that the error(s) is due to the incompleteness, or the
- 10 inaccuracy, of the information furnished to A/E by County.
- 11 I. A/E shall provide a project status on a regular (to be determined)
- 12 basis to the County.
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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

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1 shall be as follows:

2 **Classification/Titles** **Hourly Rate**

3 **PENCO Engineering Inc.**

4	_____	\$
5	_____	\$
6	_____	\$
7	_____	\$
8	_____	\$
9	_____	\$
10	_____	\$

11 **UltraSystems**

12	_____	\$
13	_____	\$
14	_____	\$
15	_____	\$
16	_____	\$
17	_____	\$
18	_____	\$

19 **Austin Foust Associates Inc.**

20	_____	\$
21	_____	\$
22	_____	\$
23	_____	\$
24	_____	\$
25	_____	\$
26	_____	\$

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Utility Specialists

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Ima Design Group

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Ninyo & Moore

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Attachment C

1 **III Price Increase/Decrease**

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

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

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

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

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

21 **VI. Reimbursable Items**

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

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1 **VII. Payment Terms**

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

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

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

18 **VIII. Invoicing Instructions**

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

- 21 a. A/E's name and address
- 22 b. A/E's remittance address, if different from (a), above
- 23 c. Name of COUNTY agency/department
- 24 d. Delivery/service address
- 25 e. AGREEMENT number
- 26 f. Service Date
- g. Description of Services
- h. Total
- i. Taxpayer ID number

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Attachment C

County of Orange, OC Public Works

Agreement No. D11-085
Revised 06-29-11

1 Invoices and support documentation are to be forwarded to:

2 OC Public Works/Administration Services
3 Attn: Accounting Services
4 300 N Flower Street, 8th Fl.
5 P.O. Box 4048
6 Santa Ana, CA 92702-4048

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ATTACHMENT C Staffing Plan

I. A/E Key Personnel

Name	Classification/ Designation	Licenses Cert. (Number)	Yr(s) of Exp.	Length with Firm
PENCO Engineering Inc.				
George Jurica	President/ Principal-in-Charge	CE 26564	36	22
Carlos Pineda	Director/ Project Manager	CE 38639	29	9.5
Brent Chamberlain	Sr. Project Engineer	CE 41889	26	9
John Lee	Project Engineer	CE 49325	28	8
Fonia Man	Senior Designer	CE 76733	7	5.5
Chao-Chun Yang	Designer	EIT 122913	5.5	5.5
UltraSystems				
Kendall Jue				
Austin Foust Associates Inc.				
Joe Foust		TR		
		CE		
Utility Specialists				
Jeff Hamen		LA		
Ima Design Group				
Tim White				
Ninyo & Moore				
Jalal Vakili		GE		
		CE		

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.

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1 A/E may reserve the right to involve other A/E personnel, as their
2 services are required. The specific individuals will be assigned based on the
3 need and timing of the service/classification required. Assignment of
4 additional key personnel shall be subject to COUNTY, as applicable, written
5 approval. COUNTY, as applicable, reserves the right to have any of A/E
6 personnel removed from providing services to COUNTY, as applicable, under
7 this AGREEMENT. COUNTY, as applicable, is not required to provide any reason
8 for the request for removal of any A/E personnel.

9 II. Subcontractor(s)

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

14	Company Name & Address	Contact Name and Telephone Number	Project Function
15	UltraSystems 16431 Scientific Way Irvine, CA 92618	Kendall Jue 949 788-4900	Environmental
16	Austin Foust Associates, Inc. 2223 Wellington Ave., Suite 300 Santa Ana, CA 92701	Joe Foust 714 667-0496	Traffic
17	Utility Specialists 25401 Cabot Road, Suite 208 Laguna Hills, CA 92653	Jeff Hamen 949 770-1900	Utilities
18	Ima Design Group 20341 SW Birch Street, Suite 100 Newport Beach, CA 92660	Tim White 949 954-7500	Landscape
19	Ninyo & Moore 475 Goddard, Suite 200 Irvine, CA 92618	Jalal Vakili 949 753-7070	Geotechnical

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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 C

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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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 _____

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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

8	First Name	Middle Initial	Last Name
9	SSN#	_____	Date of Birth _____
10	Address	_____	
11	Contract No.	_____	
12	Start Date	_____	Expiration Date _____
13	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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