

**STRIKETHROUGH**

Agreement No. OCP12-014  
Saxon Engineering  
Revised 3-8-11

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A G R E E M E N T

**THIS AGREEMENT**, hereinafter referred to as "**AGREEMENT**," for purposes of identification hereby numbered OCP12-014, and dated \_\_\_\_\_ day of \_\_\_\_\_, 2012 is

**BY AND AMONGST**

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

**AND**

Saxon Engineering Services, Inc., a California Corporation hereinafter referred to as "A/E",

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

**RECITALS**

**WHEREAS**, COUNTY requires professional services to accomplish projects and/or services ("PROJECTS/SERVICES") as described in "**On-Call Architect/Engineer (A/E) Design & Professional Consultant Services Scope Of Work**" hereinafter referred to as "Exhibit A," which is attached hereto and incorporated herein by reference;

**WHEREAS**, A/E is a firm whose principals are, as required by law, registered by the State of California for the practice of Civil Engineering, Mechanical Engineering, Electrical Engineering, Corrosion Engineering, Architecture, Landscape Architecture, or Land Surveying.

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

**A. Retainer**

1. COUNTY does hereby retain A/E to perform the

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1 PROJECTS/SERVICES as required by this AGREEMENT.

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

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

- 12                   a.     Summers/Murphy & Partners, Inc. - Landscape Architecture
- 13                   b.     NMG Geotechnical, Inc. - Geotechnical/Soils Engineers
- 14                   c.     Knitter Partners International, Inc. - Architecture
- 15                   d.     Guida Surveying, Inc. - Land Surveying/Mapping
- 16                   e.     Morrow Management - Dry Utilities (Cable, phone, utilities, etc.)

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

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

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1           **B.   PROJECTS/SERVICES**

2                   1.   Description of PROJECTS/SERVICES

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

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

12                   2.   Design Criteria and Standards

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

15                   3.   Scheduling

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

24                   b.   A/E shall allow at least three (3) working days for COUNTY  
25 review of progress work schedule. In planning work A/E should anticipate and allow  
26 ten (10) working days for COUNTY review of each submittal required in Exhibit A.

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1 c. A/E shall meet on an "as-needed" basis as determined  
2 by DIRECTOR with COUNTY to review progress of work, adherence to progress  
3 schedule, coordination of work, scheduling of seminars, if needed, and to  
4 resolve any problems that may develop.

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

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

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

19 **C. Assistance by COUNTY**

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

26 2. All of the above activities, however, shall be the primary

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1 responsibility of A/E to schedule, initiate and carry through to completion.

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

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

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

20 **E. Non-Discrimination**

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

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

**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  
6 others and that all its employees performing work under this AGREEMENT meet  
7 the citizenship or alien status requirement set forth in Federal statutes  
8 and regulations.    A/E shall obtain, from all employees performing work  
9 hereunder, all verification and other documentation of employment  
10 eligibility status required by Federal or State statutes and regulations,  
11 including but not limited to, the Immigration Reform and Control Act of  
12 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be  
13 hereafter amended.    A/E shall retain all such documentation for all covered  
14 employees for the period prescribed by the law.  
15

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

**G.    Termination of Agreement for Cause**

23           1.    If A/E breaches any of the covenants or conditions of this  
24 AGREEMENT, COUNTY shall have the right to terminate this AGREEMENT upon ten  
25 (10) days written notice prior to the effective day of termination.  
26

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

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

7           **H.    Termination for Convenience**

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

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

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

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

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

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Revised 3-8-11**I. Term and ~~Maximum Compensation~~ Extension of Agreement**

The term of this AGREEMENT is for ~~three (3)~~ five (5) years commencing on the date of execution by the Board of Supervisors, with a maximum allowable compensation of four-hundred thousand dollars (\$400,000), except as permitted in Paragraph J below. The term expiration date shall be April 16, 2017.

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

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

1. For completion and approval of all PROJECTS/SERVICES where "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein-after referred to as "Exhibit B", attached hereto and incorporated herein by reference.

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

a. The amount for Extra Work shall be determined using Exhibit B. Extra Work shall be required by and ordered in writing by DIRECTOR. DIRECTOR may order Extra Work not to exceed five thousand dollars (\$5,000) for contracts of less than fifty thousand (\$50,000), and may order Extra Work up to ten percent (10%) for contracts not exceeding two hundred fifty thousand dollars (\$250,000). For contracts greater than two hundred fifty thousand dollars (\$250,000), Extra Work shall not exceed twenty-five thousand dollars (\$25,000) plus one percent (1%) of the original contract



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1 amount in excess of two hundred fifty thousand dollars (\$250,000). In no  
2 case shall Extra Work exceed one hundred thousand dollars (\$100,000).

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

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

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

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

19           **K. Laws to be Observed**

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

23           **L. Errors and Omissions**

24           1. All PROJECTS/SERVICES submitted by A/E shall be complete  
25 and shall be carefully checked prior to submission. A/E understands that  
26 COUNTY's checking is discretionary, and A/E shall not assume that COUNTY

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

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

15           **M. Insurance**

16           1. Prior to the provision of services under this AGREEMENT,  
17 A/E agrees to purchase all required insurance at A/E's expense and to  
18 deposit with COUNTY Certificates of Insurance, including all endorsements  
19 required herein, necessary to satisfy COUNTY and that the insurance  
20 provisions of this AGREEMENT have been complied with and to keep such  
21 insurance coverage and the certificates therefor on deposit with COUNTY  
22 during the entire term of this AGREEMENT. COUNTY reserves the right to  
23 request that A/E provide COUNTY with copies of the declarations page  
24 showing all endorsements and a certified copy of the policy.

25           2. In addition, all subcontractors performing work on behalf  
26 of A/E pursuant to this AGREEMENT shall obtain insurance subject to the same

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1 terms and conditions as set forth herein for A/E.

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

10 4. If A/E fails to maintain insurance acceptable to COUNTY for  
11 the full term of this AGREEMENT, COUNTY may terminate this AGREEMENT.

12 A. Qualified Insurer

13 1. Minimum insurance company ratings as determined by the most  
14 current edition of the Best's Key Rating Guide/Property-Casualty/United  
15 States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII  
16 (Financial Size Category).

17 2. The policy or policies of insurance must be issued by an  
18 insurer licensed to do business in the state of California (California  
19 Admitted Carrier). If the carrier is a non-admitted carrier in the state of  
20 California and does not meet or exceed an A.M. Best rating of A-/VIII,  
21 CEO/Office of Risk Management retains the right to approve or reject carrier  
22 after a review of the company's performance and financial ratings. If the  
23 non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-  
24 /VIII, the agency can accept the insurance.

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

**STRIKETHROUGH**CoverageMinimum Limits

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

## B. Required Coverage Forms

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

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

## C. Required Endorsements

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

a) An Additional Insured endorsement using ISO form CG 20 10 or CG 20 33 or a form at least broad, naming the County of Orange, hereinafter referred to as "COUNTY", their elected and appointed officials, and employees as Additional Insureds.

b) A primary non-contributing endorsement evidencing that

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1 the A/E's insurance is primary and any insurance  
2 maintained by the COUNTY shall be excess and non-  
3 contributing.

4 2. The Worker's Compensation policy shall contain a waiver of  
5 subrogation endorsement waiving all rights of subrogation against COUNTY and  
6 members of the Board of Supervisors, its elected and appointed officials,  
7 officers, employees and agents.

8 3. All insurance policies required by this AGREEMENT shall  
9 waive all rights of subrogation against COUNTY and members of the Board of  
10 Supervisors, its elected and appointed officials, officers, agents and  
11 employees when acting within the scope of their appointment or employment.

12 4. All insurance policies required by this AGREEMENT shall  
13 give COUNTY thirty (30) days notice in the event of cancellation and ten  
14 (10) days notice for non-payment of premium. This shall be evidenced by  
15 policy provisions or an endorsement separate from the Certificate of  
16 Insurance.

17 5. If A/E's Professional Liability policy is a "claims made"  
18 policy, A/E shall agree to maintain professional liability coverage for two  
19 years following completion of contract.

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

22 7. Insurance certificates should be forwarded to the COUNTY  
23 address listed on the solicitation.

24 8. If the A/E fails to provide the insurance certificates and  
25 endorsements within fourteen (14) days of notification by COUNTY award may  
26 be made to the next qualified vendor.

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1           9. COUNTY expressly retains the right to require A/E to  
2 increase or decrease insurance of any of the above insurance types  
3 throughout the term of this AGREEMENT. Any increase or decrease in  
4 insurance will be as deemed by County of Orange Risk Manager as appropriate  
5 to adequately protect COUNTY.

6           10. COUNTY shall notify A/E in writing of changes in the  
7 insurance requirements. If A/E does not deposit copies of acceptable  
8 certificates of insurance and endorsements with by COUNTY incorporating  
9 such changes within thirty (30) days of receipt of such notice, this  
10 AGREEMENT may be in breach without further notice to A/E, and COUNTY shall  
11 be entitled to all legal remedies.

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

17           **N. Indemnification**

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

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

6 **O. Award of Construction Agreement and Other Future Contracts**

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

17 **P. Amendments**

18 No alteration or variation of the terms of this AGREEMENT shall  
19 be valid unless made in writing and signed by the parties; no oral  
20 understanding or agreement not incorporated herein shall be binding on  
21 either of the parties; and no exceptions, alternatives, substitutes or  
22 revisions are valid or binding on COUNTY unless authorized by COUNTY in  
23 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  
20 shall be a court of competent jurisdiction located in Orange County,  
21 California, and the PARTIES hereto agree to and do hereby submit to  
22 the jurisdiction of such court, notwithstanding Code of Civil  
23 Procedure, 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  
3 any applicable limitations period.

4 **V. Child Support Enforcement Requirements**

5 1. To comply with child support enforcement requirements of  
6 the 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 C," attached hereto and  
10 incorporated herein by reference.

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

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

22 **W. Ownership of Documents**

23 1. All data, including but not limited to letters, reports,  
24 files, plans, drawings, specifications, proposals, sketches, diagrams and  
25 calculations, prepared by A/E and/or anyone acting under the supervision of  
26 A/E pursuant to this AGREEMENT, shall become the property of COUNTY upon

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1 preparation by A/E and may be used by the COUNTY as it may require without  
2 additional cost to the COUNTY.

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

**X. Confidentiality**

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

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

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

**Y. Publication**

26           1. No copies of sketches, schedules, written documents,

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

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

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

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

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

25           3. A/E shall keep such material, including all pertinent cost  
26 accounting, financial records and proprietary data for a period of three (3)

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1 years after termination or completion of the AGREEMENT or until resolution  
2 of any claim or dispute between the PARTIES, whichever is later.

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

8 **AA. Notices**

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

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

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

24 For A/E:

25 Name: Saxon Engineering Services, Inc.  
26 Address: 2605 Temple Heights Dr., Suite A  
City: Oceanside, CA 92056  
Attn: Kurt Saxon, Principal  
Phone: 949-366-2180, ext. 123

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E-mail: Kurts@saxonengr.com  
Fax: 800-653-4193

For COUNTY:

Name: County of Orange/OC Parks Design  
Address: 13042 Old Myford Road  
City: Irvine, CA 92602-2304  
Attn: Scott Thomas, Manager - OCP Design  
Phone: 949-923-3757  
E-mail: Scott.Thomas@ocparks.com  
Fax: 949-973-3338

**AB. Attorney's Fees**

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

**AC. Interpretation**

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

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

5. The provisions of this AGREEMENT shall be interpreted in a

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1 reasonable manner to affect the purpose of the PARTIES and this AGREEMENT.

2 **AD. Headings**

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

7 **AE. Acceptance**

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

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

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

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

18 **AG. Remedies Not Exclusive**

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

24 **AH. Independent Contractor**

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

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

**AI.   Bills and Liens**

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

**AJ.   Changes**

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

**AK.   Assignment**

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

**AL.   Changes in Ownership**

22           A/E agrees that if there is a change or transfer in ownership,  
23  
24  
25  
26

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

7 **AM. Force Majeure**

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

15 **AN. Compliance with Laws**

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

23 2. A/E acknowledges that COUNTY is relying on A/E for such  
24 compliance, and pursuant to the requirements of the indemnification  
25 paragraph above, **A/E agrees that it shall defend, indemnify and hold COUNTY**  
26 **and COUNTY INDEMNITEES harmless from all liability, damages, costs and**



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1 expenses arising from or related to a violation of such laws.

2 **AO. Calendar Days**

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

5 **AP. Breach of Contract**

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

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

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

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

17 **AQ. Default**

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

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

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

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

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

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

25           6. The right of either party to terminate this AGREEMENT  
26 hereunder shall not be affected in any way by its waiver of or failure to

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1 take action with respect to any previous default.

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

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

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

13 **AS. Title to Data**

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

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

24 **AT. Availability of Funds**

25 The obligation of COUNTY is subject to the availability of funds  
26 appropriated for this purpose, and nothing herein shall be construed as

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1 obligating the COUNTY to expend or as involving the COUNTY in any contract  
2 or other obligation for future payment of money in excess of appropriations  
3 authorized by law.

4 **AU. Contract Construction**

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

10 **AV. Waiver of Jury Trial**

11 Each PARTY acknowledges that it is aware of and has had the  
12 opportunity to seek advice of counsel of its choice with respect to its  
13 rights to trial by jury, and each PARTY, for itself and its successors,  
14 creditors, and assigns, does hereby expressly and knowingly waive and  
15 release all such rights to trial by jury in any action, proceeding or  
16 counterclaim brought by any PARTY hereto against the other (and/or against  
17 its officers, directors, employees, agents, or subsidiary or affiliated  
18 entities) on or with regard to any matters whatsoever arising out of or in  
19 any way connected with this AGREEMENT and/or any other claim of injury or  
20 damage.

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