

A G R E E M E N T

THIS AGREEMENT, hereinafter referred to as "**AGREEMENT**," for purposes of identification hereby numbered D08-075, and dated the _____ day of _____, 2008 is

BY AND BETWEEN

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

AND

~~Lim & Nascimento Engineering (LAN)~~, AECOM Technical Services, Inc. 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 the services ("SERVICES") as described in the **Scope Of Work** for the Edinger Avenue Bridge over Bolsa Chica Channel Project, hereinafter referred to as "Exhibit 1," attached hereto and by this reference made a part hereof; and

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.

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

A. Retainer

1. COUNTY does hereby retain A-E to perform the SERVICES as required by this AGREEMENT.

2. A professional, duly registered in the State of California, who shall be assigned to SERVICES and whose services are offered

1 by A-E and accepted by COUNTY is **Mohan S. Char**, P.E.

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

- 8 a. BonTerra Consulting;
9 b. CH2M Hill;
10 c. Earth Mechanics;
11 d. LIN Consultant; and
12 e. 30th Street Architects.

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

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

22 **B. Services**

23 1. Description of SERVICES

24 a. SERVICES to be performed by A-E shall consist of the
25 work as specified herein and as required in Exhibit 1. If in the event
26 Exhibit 1 shall be in conflict with any provision of this AGREEMENT, the

1 wording as set forth in Exhibit 1 shall prevail.

2 b. A-E shall be responsible for submitting all SERVICES to
3 COUNTY in a form which has been thoroughly reviewed and checked for
4 completeness, accuracy and consistency by the registered professional named
5 in Paragraph 2 of Section A herein; and, any SERVICES not meeting this
6 requirement will be returned to A-E prior to review by COUNTY.

7 2. Design Criteria and Standards

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

10 3. Scheduling

11 a. Concurrently with the work of the AGREEMENT, A-E shall
12 prepare a progress work schedule and within 10 working days from the date of
13 receipt of assignments from COUNTY, A-E shall submit to COUNTY two (2) copies
14 of a progress work schedule that shall delineate dates of commencement and
15 completion of the various phases of SERVICES assignments. A-E schedule shall
16 include required COUNTY review period(s) set forth herein. An approved copy
17 of the progress schedule will be returned to A-E.

18 b. A-E shall allow at least 10 working days for COUNTY
19 review of progress work schedule. In planning work, A-E should anticipate and
20 allow 10 working days for COUNTY review of each submittal required in Exhibit
21 1.

22 c. A-E shall meet at least once every month with COUNTY to
23 review progress of work, adherence to progress schedule, coordination of
24 work, scheduling of seminars, if needed, and to resolve any problems that may
25 develop.

26 d. Within five (5) working days of each meeting, A-E shall

1 prepare a brief memorandum summarizing the results of the meeting and shall
2 submit it to COUNTY for concurrence.

3 e. A-E shall complete all the work of SERVICES and obtain
4 all approvals by the COUNTY within the time frame indicated in Exhibit 1
5 except A-E shall not be responsible for any delay beyond the control of A-E.

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

13 4. Presentations

14 When public presentations are called for, COUNTY staff will
15 schedule and/or arrange for such presentations, and will provide introduction
16 and assistance. A-E shall be responsible for preparation of all exhibits and
17 visual aids for oral presentation. Any recommendations to be made in the
18 presentation shall have prior concurrence with COUNTY staff.

19 5. Approvals of Other Agencies

20 A-E shall be responsible for obtaining all approvals
21 necessary for the implementation of SERVICES as required by law deemed
22 necessary by COUNTY. It shall be the responsibility of A-E to include in the
23 plans and special provisions any material, information or enclosures which
24 the approving agency may require, and to schedule timely submittal.

25 6. Reproduction

26 COUNTY will be responsible for all reproduction necessary for

1 advertising for bids and for contract administration. A-E shall be
2 responsible for reproductions necessary for submittals for approvals as
3 described in Exhibit 1, in addition to any other reproductions A-E may
4 require for the work.

5 **C. Assistance by COUNTY**

6 1. COUNTY shall assign an appropriate staff member to work with
7 A-E in connection with the work of this AGREEMENT. Said staff member's
8 duties will consist of the giving of advice and consultations, assisting A-E
9 in negotiations with other public agencies and private parties, miscellaneous
10 items which in the judgment of A-E or COUNTY's staff warrant attention, and
11 all other duties as may be described in Exhibit 1.

12 2. However, all of the above activities shall be the primary
13 responsibility of A-E to schedule, initiate and carry through to completion.

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

15 A-E agrees that no employee of COUNTY, including but not limited
16 to those who may be involved in this PROJECT shall be given or offered
17 employment by A-E during the life of this AGREEMENT regardless of the
18 assignments said employee may be given or the days or hours employee may
19 work.

20 **E. Non-Discrimination**

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

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.

4 **F. Employee Eligibility Verification**

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

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

22 **G. Termination of Contract 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 2. A-E shall have the opportunity to cure the alleged breach

1 prior to termination.

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

6 **H. Termination for Convenience**

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

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

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

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

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

26 **I. Term and Extension of Contract**

~~The term of this AGREEMENT is for five (5) years commencing on the date of execution by the Board of Supervisors.~~

Amendment #1

The term of this AGREEMENT is for three (3) years commencing on the date of execution by the Board of Supervisors, with a maximum allowable compensation one million four- hundred sixteen thousand, four hundred forty-seven dollars (\$1,416,447). The new term expiration date shall be October 1, 2016, except as permitted in Paragraph J.

Amendment #2

The term of this AGREEMENT is for eleven (11) years commencing on the date of execution by the Board of Supervisors, with a maximum allowable compensation one million seven- hundred sixteen thousand, four hundred forty-seven dollars (\$1,716,447). The new term expiration date shall be October 1, 2019, except as permitted in Paragraph J.

J. A-E Compensation

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

1. For completion and approval of all SERVICES where "Extra Work" (defined as changes in approved portions of the SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Exhibit 2". Notwithstanding the foregoing, any such total compensation shall not exceed the maximum allowable compensation as stipulated in Exhibit 2.

2. Where extra work is authorized for SERVICES:

a. The amount for Extra Work shall be determined using the Schedule of Rates attached hereto as Exhibit 3. Extra Work shall be required by and ordered in writing by DIRECTOR. DIRECTOR may order Extra Work not to exceed \$5,000 for contracts of less than \$50,000, and may order Extra Work up

1 to 10 percent for contracts not exceeding \$250,000. For contracts greater
2 than \$250,000, Extra Work shall not exceed \$25,000 plus one (1) percent of
3 the original contract amount in excess of \$250,000. In no case shall Extra
4 Work exceed \$100,000.

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

8 3. For partial completion of work of SERVICES followed by default
9 on part of A-E:

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

12 b. For failure to complete and secure approval of other
13 authorized phases, A-E shall, upon completion of SERVICES by others, be
14 entitled to receive compensation based on approved work of SERVICES not to
15 exceed the amounts specified in Exhibit 1 for that particular submittal, plus
16 the reasonable value as determined by COUNTY of the non-approved work;
17 provided, however, that if the cost to COUNTY to complete the contract
18 exceeds the amount specified herein, A-E shall be liable to COUNTY for such
19 excess costs attributable to A-E's breach of the 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 SERVICES.

24 **L. Errors and Omissions**

25 1. All SERVICES submitted by A-E shall be complete and shall be
26 carefully checked prior to submission. A-E understands that COUNTY's

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

7 2. If A-E subcontracts portions of the SERVICES to be performed
8 under the terms of this AGREEMENT, A-E shall obtain evidence that such
9 subcontractors have purchased Professional Liability Insurance to the same
10 limits as described in Section M and containing the same clauses as the
11 insurance required of A-E under the terms of this AGREEMENT. Evidence of
12 subcontractor's insurance shall be submitted to COUNTY upon request.

13 **M. Insurance**

14 1. A-E shall maintain insurance coverage appropriate to protect
15 against all risks arising from or in any way connected with the subject
16 matters of this AGREEMENT, acceptable to COUNTY, effective on the first day
17 of work and in full force throughout the full term of this AGREEMENT. Except
18 for Professional Liability Insurance, the policy (ies) shall be underwritten
19 by insurers admitted to operate in the State of California (California
20 Admitted Carriers), acceptable to COUNTY on forms no less broad in the scope
21 of coverage than standard forms.

22 2. A-E agrees to deposit with COUNTY within fourteen (14)
23 calendar days of the date of execution of this AGREEMENT at 300 North Flower
24 Street, Room No. 509, Santa Ana, CA 92702, certificates of insurance and
25 endorsements (certificates shall be in a form obtainable from COUNTY) in
26 duplicate to satisfy COUNTY that insurance requirements of this AGREEMENT

1 have been complied with and to keep such insurance in effect and the
2 certificates therefore on deposit with COUNTY during the entire term of this
3 AGREEMENT.

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

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

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

23 6. The costs of such changes in insurance during the
24 accomplishments of SERVICES may be requested by COUNTY, shall be paid by
25 COUNTY to A-E as either Extra Work, as described in Section H of this
26 AGREEMENT, or as an amendment to the AGREEMENT.

1 7. COUNTY shall notify A-E in writing of changes in the
2 insurance requirements; and if A-E does not deposit copies of acceptable
3 certificates and endorsements with COUNTY incorporating such changes within
4 fourteen (14) days of receipt of such notice, this AGREEMENT shall be in
5 default without further notice to A-E, and COUNTY shall be entitled to all
6 legal remedies.

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

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

17 10. 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).

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

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

1 ratings.

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

4 <u>Coverage</u>	<u>Minimum Limit</u>
5 Workers' Compensation	Statutory
6 Employer's Liability	\$1,000,000 per occurrence
7 Comprehensive General Liability	\$1,000,000 combined single limit per
8	occurrence; \$2,000,000 aggregate
9 Auto Liability	\$1,000,000 combined single limit per
10	occurrence
11 Professional Liability	\$1,000,000 claims made
12 (Errors and Omissions)	

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

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

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

1 Insurance. In addition, the cancellation clause must include language as
2 follows, which edits the pre-printed ACCORD certificate:

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

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

10 d. A clause stating, "The following parties are hereby
11 named additional insureds: County of Orange, the OC Parks, and the City of
12 Huntington Beach" (for Comprehensive General Liability and Auto Liability
13 only).

14 e. A clause stating, "This insurance shall allow for
15 severability of interest of the: County of Orange, the OC Parks, and the City
16 of Huntington Beach."

17 f. A clause stating, "Workers' Compensation insurance
18 shall waive all rights of subrogation against the "County of Orange" and the
19 "Orange County Flood Control District."

20 g. Insurance policy(ies) obtained by A-E shall not contain
21 insurance policy riders or clauses which shall negate or modify any
22 provision(s) or requirement(s) contained within the AGREEMENT.

23 **N. Indemnification**

24 A-E agrees to indemnify, defend with counsel approved in writing
25 by COUNTY, and hold COUNTY, its elected and appointed officials, officers,
26 employees, agents and those special districts and agencies which COUNTY'S

1 Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES")
2 harmless from any claims, demands or liability of any kind or nature,
3 including but not limited to personal injury or property damage, arising out
4 of, pertaining to, or relating to the negligence, recklessness, or willful
5 misconduct under this agreement. If judgment is entered against A-E and
6 COUNTY by a court of competent jurisdiction because of the concurrent active
7 negligence of A-E and COUNTY or COUNTY INDEMNITEES, A-E and COUNTY agree that
8 liability will be apportioned as determined by the court. Neither party
9 shall request a jury apportionment. Notwithstanding anything stated above,
10 nothing contained herein shall relieve A-E of any insurance requirements or
11 obligations created elsewhere in this AGREEMENT.

12 **O. Award of Construction Contract**

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

23 **P. Amendments**

24 No alteration or variation of the terms of this AGREEMENT shall be
25 valid unless made in writing and signed by the parties; no oral understanding
26 or agreement not incorporated herein shall be binding on either of the

1 parties; and no exceptions, alternatives, substitutes or revisions are valid
2 or binding on COUNTY unless authorized by COUNTY in writing.

3 **Q. Successors and Assigns**

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

7 **R. Entirety**

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

10 **S. Severability**

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

15 **T. Binding Obligation**

16 The parties to this AGREEMENT represent and warrant that this
17 AGREEMENT has been duly authorized and executed and constitute the legally
18 binding obligation of their respective organization or entity enforceable in
19 accordance with its terms.

20 **U. Governing Law and Venue**

21 1. This AGREEMENT has been negotiated and executed in the State
22 of California and shall be governed by and construed under the laws of the
23 State of California. In the event of any legal action to enforce or
24 interpret this AGREEMENT, the sole and exclusive venue shall be a court of
25 competent jurisdiction located in Orange County, California, and the parties
26 hereto agree to and do hereby submit to the jurisdiction of such court,

1 notwithstanding Code of Civil Procedure, Section 394.

2 2. The parties specifically agree that by soliciting and
3 entering into and performing SERVICES under this AGREEMENT, the A-E shall be
4 deemed to constitute doing business within Orange County from the time of
5 solicitation of work, through the period when all SERVICES under this
6 AGREEMENT is completed, and continuing until the expiration of any applicable
7 limitations period.

8 **V. Child Support Enforcement Requirements**

9 1. To comply with child support enforcement requirements of the
10 COUNTY, within 30 days of notification of selection for award of SERVICES, A-
11 E agrees to complete and furnish to DIRECTOR the information required in
12 County of Orange Child Support Enforcement Contract Certification,
13 hereinafter referred to as "Exhibit 4," attached hereto and incorporated
14 herein by reference.

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

18 **W. Ownership of Documents**

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

25 2. COUNTY shall not be limited in any way to its use thereof at
26 any time, including the release of this data to third parties. A-E shall be

1 held harmless for release of such data as may be prepared or created under
2 this AGREEMENT to any third party. If A-E and/or anyone acting under the
3 supervision of A-E should later desire to use any of the data prepared in
4 connection with this AGREEMENT, A-E shall first obtain the written approval
5 of COUNTY.

6 **X. Confidentiality**

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

15 2. Nothing furnished to A-E which is generally known among
16 counties in Southern California shall be deemed confidential.

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

21 **Y. Publication**

22 1. No copies, sketches or graphs, including graphic art work,
23 resulting from performance or prepared in connection with the SERVICES, are
24 to be released by A-E and/or anyone acting under the supervision of A-E to
25 any person, partnership, company, corporation, or agency, without prior
26 written approval by COUNTY, except as necessary for the performance of the

1 SERVICES.

2 2. All press releases, including graphic display information to
3 be published in newspapers, magazines, etc., are to be administered only by
4 COUNTY unless otherwise agreed to in writing by both parties.

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

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

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

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

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

21 **AA. Notices**

22 1. Any and all notices, requests demands and other
23 communications contemplated, called for, permitted, or required to be given
24 hereunder shall be in writing, except through the course of the parties'
25 project managers' routine exchange of information and cooperation during the
26 SERVICES.

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

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

11 For A-E:

12 Name: ~~LAN Engineering~~ AECOM Technical Services,
13 Inc.
14 Address: ~~20 Empire Drive~~ 999 Town and Country Road
15 City: ~~Lake Forest, CA~~ 92630 Orange, CA 92868
16 Attn: ~~Mr. Mohan S. Char~~ Janson Ting
17 Phone: ~~(949) 768-8888~~ (714) 567-2527
18 E-mail: ~~Mohan.Char@LANEngineering.com~~
19 Janson.Ting@aecom.com
20 Fax: ~~(949) 768-5912~~

21 For COUNTY:

22 Name: Director, OCPW
23 Address: PO Box 4048
24 City: Santa Ana, CA 92702-4048
25 Attn: ~~Mr. Larry Abad~~ Shane Silsby
26 Phone: ~~(714) 834-3061~~ (714) 667-9700
 E-mail: ~~larry.abad@rdmd.ocgov.com~~
 Shane.silsby@ocpw.ocgov.com
 Fax: ~~(714) 834-2496~~ (714) 967-0876

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

1 persons sophisticated and knowledgeable in the matters dealt with in this
2 AGREEMENT.

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

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

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

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

16 **AD. Headings**

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

21 **AE. Acceptance**

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

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

26 1. No term or provision of this AGREEMENT shall be deemed waived

1 and no breach excused, unless such waiver or consent shall be in writing and
2 signed by the party claimed to have waived or consented.

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

6 **AG. Remedies Not Exclusive**

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

11 **AH. Independent Contractor**

12 1. A-E shall be considered an independent contractor and neither
13 A-E, its employees, nor anyone working under A-E shall be considered an agent
14 or an employee of COUNTY.

15 2. Neither A-E, its employees nor anyone working under A-E shall
16 qualify for workers' compensation or other fringe benefits of any kind
17 through COUNTY.

18 **AI. Bills and Liens**

19 A-E shall pay promptly all indebtedness for labor, materials and
20 equipment used in performance of the work. A-E shall not permit any lien or
21 charge to attach to the work or the premises, but if any does so attach, A-E
22 shall promptly procure its release and, in accordance with the requirements
23 of the indemnification section above, indemnify, defend, and hold COUNTY
24 harmless and be responsible for payment of all costs, damages, penalties and
25 expenses arising from or related thereto.

26 **AJ. Changes**

1 A-E shall make no changes in the work or perform any additional
2 work without the COUNTY'S specific written approval.

3 **AK. Assignment**

4 The terms, covenants, and conditions contained herein shall apply
5 to and the bind the heirs, successors, executors, administrators and assigns
6 of the parties. Furthermore, neither the performance of this AGREEMENT nor
7 any portion thereof may be assigned or sub-contracted by A-E without the
8 express written consent of COUNTY. Any attempt by A-E to assign or sub-
9 contract the performance or any portion thereof of this agreement without the
10 express written consent of COUNTY shall be invalid and shall constitute a
11 breach of this AGREEMENT.

12 **AL. Changes in Ownership**

13 A-E agrees that if there is a change or transfer in ownership of
14 A-E's business prior to completion of this AGREEMENT, the new owners shall be
15 required under terms of sale or other transfer to assume A-E's duties and
16 obligations contained in this AGREEMENT and complete them to the satisfaction
17 of COUNTY.

18 **AM. Force Majeure**

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

26 **AN. Compliance with Laws**

1 1. A-E represents and agrees that services to be provided under
2 this AGREEMENT shall fully comply, at A-E's expense, with all standards,
3 laws, statutes, restrictions, ordinances, requirements, and regulations
4 (collectively "laws"), including, but not limited to those issued by COUNTY
5 in its governmental capacity and all other laws applicable to the SERVICES at
6 the time SERVICES are provided to and accepted by COUNTY.

7 2. A-E acknowledges that COUNTY is relying on A-E for such
8 compliance, and pursuant to the requirements of the indemnification paragraph
9 above, A-E agrees that it shall defend, indemnify and hold COUNTY and COUNTY
10 INDEMNITEES harmless from all liability, damages, costs, and expenses arising
11 from or related to a violation of such laws.

12 **AO. Calendar Days**

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

15 **AP. Breach of Contract**

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

20 1. Afford the A-E written notice of the breach and ten (10)
21 calendar days or such shorter time that may be specified in this AGREEMENT
22 within which to cure the breach;

23 2. Discontinue payment to the A-E for and during the period in
24 which the A-E is in breach; and

25 3. Offset those monies disallowed pursuant to the above, against
26 any monies billed by the A-E but yet unpaid by the COUNTY.

1 **AQ. Default**

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

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

20 3. In the event of the cancellation of this AGREEMENT, either in
21 whole or in part, by reason of the default or breach by the A-E, any loss or
22 damage sustained by the COUNTY in procuring any equipment or service which
23 the A-E agreed to supply under this AGREEMENT shall be borne and paid for by
24 the A-E.

25 4. Default shall include failure to carry out any of the
26 requirements of this AGREEMENT, including, but not limited to not providing

1 enough properly skilled workers or proper materials, persistently
2 disregarding laws and or ordinances, not proceeding with the SERVICES as
3 agreed to herein, or otherwise substantially violating any provision of this
4 AGREEMENT.

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

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

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

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

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

22 **AS. Title to Data**

23 1. All materials, documents, data or information obtained from
24 the COUNTY data files or any COUNTY medium furnished to the A-E in the
25 performance of this AGREEMENT, will at all times remain the property of the
26 COUNTY. Such data or information may not be used or copied for direct or

1 indirect use by the A-E after completion or termination of this AGREEMENT
2 without the express written consent of the COUNTY.

3 2. All materials, documents, data or information, including
4 copies furnished by COUNTY and loaned to A-E for his temporary use, must be
5 returned to the COUNTY at the end of this AGREEMENT unless otherwise
6 specified by the DIRECTOR.

7 **AT. Availability of Funds**

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

13 **AU. Contingency of Funding**

14 A-E acknowledges that funding or portions of funding for this
15 AGREEMENT may also be contingent upon receipt of funds from, and/or
16 appropriation of funds by Caltrans. If such funding and/or appropriations are
17 not forthcoming or otherwise limited, COUNTY may immediately terminate or
18 modify this AGREEMENT without penalty.

19 **AV. Contract Construction**

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

25 **AW. Waiver of Jury Trial**

26 Each party acknowledges that it is aware of and has had the

1 opportunity to seek advice of counsel of its choice with respect to its
2 rights to trial by jury, and each party, for itself and its successors,
3 creditors, and assigns, does hereby expressly and knowingly waive and release
4 all such rights to trial by jury in any action, proceeding or counterclaim
5 brought by any party hereto against the other (and/or against its officers,
6 directors, employees, agents, or subsidiary or affiliated entities) on or
7 with regard to any matters whatsoever arising out of or in any way connected
8 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 the
2 dates opposite their respective signatures.

3 ~~LAN Engineering,~~ **AECOM Technical**
4 **Services Inc.**

5
6 Date: _____ By _____

7 *Print Name & Title: _____
8 Owner/Corporate Officer

9
10 Date: _____ By _____

11 *Print Name & Title: _____
12 Secretary/Corporate Officer

13 *(If a corporation, the document must be signed by two corporate officers.
14 The 1st must be either Chairman of the Board, President or any Vice President.
15 The 2nd signature must be either the Secretary, Assistant Secretary, Chief
16 Financial Officer, or Assistant Treasurer.)

17 **County of Orange,**

18 Date: _____ By _____

19 Chairman of the Board of Supervisors

20 SIGNED AND CERTIFIED THAT A COPY OF THIS
21 AGREEMENT HAS BEEN DELIVERED TO THE CHAIRMAN
22 OF THE BOARD.

23 Date: _____ By _____

24 Darlene J. Bloom
25 Clerk of the Board for the
26 County of Orange, California

APPROVED AS TO FORM:
COUNTY COUNSEL

ATTACHMENT B

Agreement No. D08-075
(w/prof. liab.)
Revised 09-17-08

1 By _____
2 Deputy

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