



County Executive Office

Memorandum

July 26, 2006

To: Bill Campbell, Chairman

From: Thomas G. Mauk, County Executive Officer *Rob Richardson*

Subject: Exception to the Rule 21

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 ORANGE COUNTY
 BOARD OF SUPERVISORS

S.31A

The County Executive Office is requesting a supplemental for the August 1, 2006 Board Hearing Meeting.

Agency: Dana Point Harbor
Subject: Agreement No.D06-053, Cash & Associates.
District: 5th

Reason for supplemental: Modifications to Agenda Item.

Bill Campbell

Concur: _____
 Bill Campbell, Chairman
 Orange County Board of Supervisors

cc: Rob Richardson
 Assistant to the County Executive Officer



**SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT**

S31A

ASR Control

MEETING DATE: 08/01/06
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 5th
SUBMITTING AGENCY/DEPARTMENT: Dana Point Harbor
DEPARTMENT CONTACT PERSON(S): George Carvalho, (949) 923-3798
 Vincent Gin, (949) 923-3794

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SUBJECT: Agreement No. D06-053, Cash & Associates.

CEO CONCUR

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD
Discussion

Budgeted: Yes **Current Year Cost:** \$2,000,000 **Annual Cost:** N/A
Staffing Impact: N/A **# of Positions:** **Sole Source:** No
Current Fiscal Year Revenue: N/A
Funding Source: Dana Point Tidelands Fund:100%

Prior Board Action: Minute Order dated April 12, 2005

RECOMMENDED ACTION(S)

1. Find that the subject project is statutorily exempt from the provisions of CEQA pursuant to Section 15262 of the CEQA Guidelines
2. Select Cash & Associates for Architect-Engineer (A-E) Services.
3. Approve and execute A-E Agreement No. D06-053 between County and Cash & Associates for an amount not to exceed \$2,000,000.

SUMMARY:

Dana Point Harbor Department (DPHD) requests Board approval of Agreement D06-053 between County and Cash & Associates for Architect-Engineer Services.

BACKGROUND INFORMATION:

On April 12, 2005, your Board authorized County staff to execute a loan agreement with the Department of Boating and Waterways (DBW) to obtain low interest State loans for marina renovation. DBW has approved phase I (\$1,500,000) and phase II (\$3,700,000) for the Dana Point Harbor Marina Renovation project loan.

Dana Point Harbor Department (DPHD) is in urgent need of small craft marina engineering services to initiate the Marina Renovation project and stay on schedule. In addition, marina related issues and questions are being raised in connection with the Commercial Core project and work on Marina Renovation project is required to respond in a timely manner.

Due to the limited number of consultants specializing in small craft marina engineering and even smaller number that have experience with obtaining Coastal Commission approval for marina renovation projects, DPHD initiated an accelerated consultant selection process. Five prominent coastal engineering firms with relevant marina experience were identified using non bidding procedures and were invited to be interviewed by the County. The interview panel consisted of two County employees from separate departments and the County's contract project manager for the Marina Renovation project. Subsequently, two of the five consultants were invited to submit detail proposals for the project. The five firms invited to interview were (in alphabetical order): BLUEwater Design Group, Cash & Associates, Moffatt & Nichol, Noble Consultants, TranSystems/Concept Marine Associates. This approach is a departure from the County's Contract Policy Manual. In light of the schedule need and the limited pool of qualified and experienced consultants, DPHD respectfully requests your Board approve the modified selection process.

After reviewing the proposals, DPHD recommends selection of Cash & Associates and approval and execution of Agreement D06-053 for Architect-Engineer Services with Cash & Associates in an amount not to exceed \$2,000,000. The term of Agreement D06-053 is for three years and may be extended for three additional one year periods without increasing total agreement amount upon approval for each of the three (3) years. The total agreement amount includes \$288,200 for contingency and unanticipated changes to scope of work. Upon approval, DPHD will return to the Board in the future for a subsequent amendment to agreement with Cash & Associates for the construction management phase of the Marina Renovation project.

INSURANCE

Professional liability insurance is required by the contract in the amount of \$1,000,000 per claim, \$1,000,000 aggregate with an endorsement providing an additional (excess) \$1,000,000 limit applicable specifically to the Dana Point Harbor marina renovation services provided under this agreement.

CONTRACT NEED AND FUNDING

Funding for this Agreement is provided 100% by Dana Point Tidelands fund and is supported by a low interest loan from the Department of Boating and Waterways. Services provided by this Agreement are required to renovate the Dana Point Harbor marina.

COMPLIANCE WITH CEQA

The subject project is statutorily exempt from the provisions of CEQA pursuant to Section 15262 of the CEQA Guidelines.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

RDMD/Planning
County Counsel

EXHIBIT(S):

ATTACHMENT(S):

A. Agreement No. D06-053

A G R E E M E N T

1
2 **THIS AGREEMENT**, hereinafter referred to as "**AGREEMENT**," for purposes of
3 identification hereby numbered **D06-053**, and dated First day of August, 2006 is

4 **BY AND BETWEEN**

5 County of Orange

6 _____
7 hereinafter referred to as "COUNTY"

8 AND

Cash & Associates, Inc

9 _____
10 hereinafter referred to as "A-E"

11
12 **WHEREAS**, COUNTY requires professional services to accomplish work
13 described in Exhibit A attached hereto and by this reference made a part
14 hereof, hereinafter called "PROJECT" and,

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

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

21 **A. Retainer**

22 COUNTY does hereby retain A-E to perform the professional services
23 to complete PROJECT as hereinafter specified. A professional, duly registered
24 in the State of California, who shall be assigned to PROJECT and whose
25 services are offered by A-E and accepted by COUNTY is **Randy Mason, P.E.**

26 A-E may employ special consultants in the accomplishment of the work of
this AGREEMENT; and, it is agreed that only the following firms or individual

1 consultants are to be employed.

- 2 1) Leighton Consulting, Inc.
- 3 2) LSA Associates
- 4 3) Coastal Management Resources
- 5 4) Bill Carr Surveys, Inc.
- 6 5) Gahagan & Bryant Associates, Inc.
- 7 6) MBI Media
- 8 7) WSM Consulting

9 Consultants may be substituted by mutual AGREEMENT of A-E and the
10 Director, Dana Point Harbor Department, or his designee, hereinafter referred
11 to as "**DIRECTOR.**"

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

18 **B. Services**

19 1. Description of Services

20 Services to be performed by A-E shall consist of the work as
21 specified herein and as required in Exhibit A. **If in the event Exhibit A**
22 **shall be in conflict with any provision of this AGREEMENT, the wording as set**
23 **forth in Exhibit A shall prevail.**

24 A-E shall be responsible for submitting all work of PROJECT to
25 COUNTY in a form which has been thoroughly reviewed and checked for
26 completeness, accuracy and consistency by the registered professional named in
Section A herein; and, any work not meeting this requirement will be returned

1 to A-E prior to review by COUNTY.

2 2. Design Criteria and Standards

3 All work shall be performed in accordance with instructions,
4 criteria and standards set forth by the DIRECTOR.

5 3. Soil Investigation

6 If Exhibit A provides that A-E shall be responsible for the
7 determination of soil conditions, A-E shall discuss the extent of surveys,
8 tests or investigations with DIRECTOR, and in the event of disagreement, the
9 decision of DIRECTOR shall be final. If DIRECTOR determines that soil
10 surveys, soil investigations or other soil tests are not required, A-E shall
11 have no responsibility and/or liability arising out of the failure to perform
12 any such test.

13 If Exhibit A provides that COUNTY shall be responsible for the
14 determination of soil conditions, A-E shall have no responsibility for any
15 liability that may arise out of the making, or failure to make soil surveys,
16 subsurface soil tests or general soil testing. A-E shall be responsible to
17 determine that the information supplied by COUNTY is sufficient for A-E's
18 design. In the event that A-E determines that the information supplied by
19 COUNTY is insufficient or is erroneous, A-E shall notify COUNTY and shall
20 advise COUNTY in writing of A-E's judgment regarding the need for further
21 investigation.

22 4. Location of Utilities

23 COUNTY shall gather all available information about the existence
24 of above and below ground utilities that might affect the PROJECT and provide
25 that information to A-E. It shall be A-E's responsibility to accurately plot
26 such utility information on the plans, and to take same into account during
the accomplishment of all work for PROJECT.

1 In the event A-E determines that information supplied by COUNTY is
2 erroneous, A-E shall notify COUNTY of errors or omissions discovered and shall
3 advise COUNTY in writing of A-E's judgment regarding the need for further
4 investigation.

5 A-E shall identify all utilities by kind and owner's name and
6 describe the disposition of all such utilities on any preliminary and final
7 plans for PROJECT and shall make appropriate reference to and descriptions of
8 such utilities and their owners.

9 In performing the above obligations, A-E is entitled to rely on the
10 accuracy of the information provided by COUNTY without independent
11 investigation or evaluation except as would be revealed to a reasonable
12 engineer in a normal visual field review of the PROJECT, or unless
13 specifically provided otherwise in Exhibit A.

14 5. Rights-of-Way

15 PROJECT will be located within COUNTY and/or other publicly owned
16 rights of way.

17 In the event unanticipated additional right-of-way is necessary, A-
18 E shall be responsible for the timely determination of additional land,
19 easements or rights-of-way (both permanent and temporary) needed and shall
20 assist COUNTY in negotiations with property owners relative to access during
21 construction, temporary protection of property during construction,
22 relocations of improvements, restoration of property after completion of
23 construction and other related matters. These negotiations shall be
24 accomplished to the extent possible during the period of acquisition of
25 permanent rights, it being COUNTY's responsibility to obtain title reports,
26 perform all right-of-way engineering and acquire all easements and right-of-
way required for PROJECT.

1 6. Scheduling

2 Concurrently with the work of the AGREEMENT, A-E shall prepare a
3 progress work schedule and within 5 working days from the date of execution of
4 this AGREEMENT by COUNTY, A-E shall submit to COUNTY two copies of a progress
5 work schedule which shall delineate dates of commencement and completion of
6 the various phases of PROJECT. A-E schedule shall include required COUNTY
7 review period set forth herein. An approved copy of the progress schedule
8 will be returned to A-E.

9 A-E shall allow at least 5 working days for COUNTY review of
10 progress work schedule. In planning work A-E should anticipate and allow 10
11 working days for COUNTY review of each submittal required in Exhibit A. A-E
12 shall meet at least once every two weeks with COUNTY's staff to review
13 progress of work, adherence to progress schedule, coordination of work,
14 scheduling of seminars, if needed, and to resolve any problems that may
15 develop. Within three working days of each meeting, A-E shall prepare a brief
16 memorandum summarizing the results of the meeting and shall submit it to
17 COUNTY's staff for concurrence.

18 A-E shall complete all the work of PROJECT and obtain all approvals
19 by the COUNTY within the time frame indicated in Exhibit A except A-E shall
20 not be responsible for any delay beyond the control of A-E. In the event A-E
21 fails to complete the work and obtain the approval of DIRECTOR in the time
22 allowed, COUNTY shall have the option of completing the work by its own forces
23 or by contract with another firm. The time allowed for A-E to complete the
24 work pursuant to this AGREEMENT shall be extended for delay caused by COUNTY
25 in completing its work pursuant to this AGREEMENT which delay exceeds the
26 agreed COUNTY review and/or approval time periods.

7. Presentations

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

6 8. Approvals of Other Agencies

7 A-E shall be responsible for assisting COUNTY in obtaining all
8 approvals necessary for the implementation of PROJECT as required by law
9 deemed necessary by COUNTY. It shall be the responsibility of A-E to include
10 in the plans and special provisions any material, information or enclosures
11 which the approving agency may require, and to schedule a timely submittal.

12 9. Reproduction

13 COUNTY will be responsible for all reproduction necessary for
14 advertising for bids and for contract administration.

15 A-E shall be responsible for reproductions necessary for submittals
16 for approvals as described in Exhibit A, in addition to any other
17 reproductions A-E may require for the work.

18 **C. Assistance by COUNTY**

19 COUNTY shall assign an appropriate staff member to work with A-E in
20 connection with the work of this AGREEMENT. Said staff member's duties will
21 consist of the giving of advice and consultations, assisting A-E in
22 negotiations with other public agencies and private parties, and miscellaneous
23 items which in the judgment of A-E or COUNTY's staff warrant attention. All
24 of the above activities, however, shall be the primary responsibility of A-E
25 to schedule, initiate and carry through to completion.

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

 A-E agrees that no employee of COUNTY, including but not limited to

1 those who may be involved in this PROJECT shall be given or offered employment
2 by A-E during the life of this AGREEMENT regardless of the assignments said
3 employee may be given or the days or hours employee may work.

4 **E. Non-Discrimination**

5 In the performance of this AGREEMENT, A-E agrees that it will
6 comply with the requirements of the California Labor Code and not engage nor
7 permit any subcontractors to engage in discrimination in employment of persons
8 because of the race, religious creed, color, national origin, ancestry,
9 physical disability, mental disability, medical condition, marital status, or
10 sex of such persons. A-E acknowledges that a violation of this provision shall
11 subject A-E to all the penalties imposed for a violation of the California
12 Labor Code.

13 **F. Termination of Contract for Cause**

14 If A-E breaches any of the covenants or conditions of this
15 AGREEMENT, COUNTY shall have the right to terminate this AGREEMENT upon ten
16 (10) days written notice prior to the effective day of termination. A-E shall
17 have the opportunity to cure the alleged breach prior to termination. In the
18 event the alleged breach is not cured by A-E prior to termination, all work
19 performed by A-E pursuant to this AGREEMENT, which work has been reduced to
20 plans or other documents, shall be made available to COUNTY.

21 **G. Termination for Convenience**

22 Notwithstanding any other provision of the AGREEMENT, the COUNTY
23 may, at any time, and without cause, terminate this AGREEMENT in whole or in
24 part, upon not less than seven calendar days' written notice to the A-E. Such
25 termination shall be effected by delivery to the A-E of a notice of
26 termination specifying the effective date of the termination and the extent of
the Work to be terminated. The A-E shall immediately stop work in accordance

1 with the notice and comply with any other direction as may be specified in the
2 notice or as provided subsequently by COUNTY. The COUNTY shall pay the A-E
3 for the Work completed prior to the effective date of the termination, and
4 such payment shall be the A-E's sole remedy under this AGREEMENT. Under no
5 circumstances will the A-E be entitled to anticipatory or unearned profits,
6 consequential damages, or other damages of any sort as a result of a
7 termination or partial termination under this Paragraph. The A-E shall insert
8 in all subcontracts that the Subcontractor shall stop work on the date of and
9 to the extent specified in a notice of termination, and shall require
10 Subcontractors to insert the same condition in any lower tier subcontracts.

11 **H. Term and Extension of Contract**

12 The term of this AGREEMENT is for three years commencing on the
13 date of execution by the Board of Supervisors. The term of the AGREEMENT may
14 be extended for **three additional one (1)** year periods upon mutual agreement of
15 the parties, at the same terms and conditions and at the sole discretion of
16 the DIRECTOR. Extension shall be in writing and will not increase the maximum
17 allowable compensation of **\$2,000,000.00**.

18
19 **I. A-E Compensation**

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

22 1. For completion and approval of all work for PROJECT where extra
23 work is not authorized, compensation including reimbursables shall be
24 described and payable as stipulated in Exhibit A.

25 2. Where extra work is authorized for PROJECT:

26 a. The amount for extra work shall be determined using the fee
schedule attached hereto as Exhibit B. Extra work shall be required by and

1 ordered in writing by DIRECTOR. DIRECTOR may order extra work not to exceed
2 \$5,000 for contracts of less than \$50,000, and may order extra work up to 10
3 percent for contracts not exceeding \$250,000. For contracts greater than
4 \$250,000, extra work shall not exceed \$25,000 plus 1 percent of the original
5 contract amount in excess of \$250,000. In no case shall extra work exceed
6 \$100,000. A-E's billing for the extra work shall include but not be limited
7 to names of A-E's staff employed in the extra work, classification of
8 employees and number of hours worked. Extra work is defined as changes in
9 approved portions of the PROJECT required by and ordered in writing by
10 DIRECTOR which changes constitute a change in or departure from said approved
11 portions of PROJECT.

12 3. For partial completion of work of PROJECT followed by default on
13 part of A-E.

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

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

24 **J. Laws to be Observed**

25 A-E is assumed to be familiar with and, at all times, shall observe
26 and comply with all federal, state and local laws, ordinances and regulations
in any manner affecting the conduct of the work.

1 **K. Errors and Omissions**

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

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

17 **L. Insurance**

18 Prior to the provision of services under this agreement or payment
19 therefore and unless modified by Exhibit A and/or Exhibit B, the A-E agrees to
20 purchase all required insurance at A-E's expense and to deposit with the
21 COUNTY certificates of insurance, including all endorsements required herein,
22 necessary to satisfy the COUNTY that the insurance provisions of this
23 AGREEMENT have been complied with and to keep such insurance coverage and the
24 certificates and endorsements therefore on deposit with the County during the
25 entire term of this AGREEMENT. In addition, all subcontractors performing
26 work on behalf of A-E pursuant to this agreement shall obtain insurance
subject to the same terms and conditions as set below. A-E shall not allow

1 subcontractors to work if subcontractors have less than the level of coverage
2 required by the COUNTY for subcontractors under this AGREEMENT. It is the
3 obligation of the A-E to provide notice of the insurance requirements to every
4 subcontractor and to receive proof of insurance prior to allowing any
5 subcontractor to begin work. Such proof of insurance must be maintained by A-
6 E through the entirety of the project for inspection by COUNTY representative
7 at any reasonable time.

8 COUNTY shall retain the right to review the coverage, form, and
9 amount of the insurance provided by A-E prior to the start of work on project
10 by A-E and at any time during this agreement. COUNTY shall review insurance
11 coverage for subcontractors on a case-by-case basis and may at its sole
12 discretion, increase or decrease the required insurance coverage. If, in the
13 opinion of COUNTY, the certificates and endorsements provided by A-E do not
14 provide the coverage, form, and amount of insurance as required and listed
15 herein, COUNTY shall notify A-E in writing that A-E is in default of the
16 agreement. A-E shall have fourteen (14) calendar days from the date of such
17 notification from COUNTY to provide adequate insurance. If A-E fails to
18 provide adequate insurance within the time frame specified, COUNTY shall
19 terminate the agreement without compensation to A-E.

20 Insurance certificates and endorsements should be forwarded to the
21 agency/department address listed on the contract documents. A-E agrees to
22 deposit with COUNTY within 14 days of the date of execution of this agreement
23 certificates and endorsements to satisfy COUNTY that insurance requirements of
24 this agreement have been complied with and to keep such insurance in effect
25 and the certificates and endorsements on deposit with COUNTY during the entire
26 term of the agreement.

All insurance policies required by this AGREEMENT shall declare any

1 deductible or self-insured retention (SIR). The maximum deductible or SIR
2 amount shall be \$25,000 for general liability and \$5,000 for automobile
3 liability. The A-E shall be responsible for reimbursement of any deductible
4 to the insurer. Any self-insured retentions (SIRs) or deductibles shall be
5 clearly stated on the Certificate of Insurance. If the A-E fails to maintain
6 insurance acceptable to the COUNTY for the full term of this AGREEMENT, the
7 COUNTY may terminate this AGREEMENT.

8 **Qualified Insurer**

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

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

16 If the carrier is a non-admitted carrier in the state of
17 California, CEO/Office of Risk Management retains the right to approve or
18 reject carrier after a review of the company's performance and financial
19 ratings.

20 The policy or policies of insurance maintained by the A-E shall
21 provide the minimum limits and coverage as set forth below:

A-E Coverage Requirements	
Coverage	Minimum Limits
Commercial General Liability including broad form property	\$5,000,000 combined single limit per occurrence

1	damage and contractual liability	\$10,000,000 aggregate
2		
3	Automobile Liability including	\$1,000,000 combined single
4	coverage for owned, non-owned and	limit per occurrence
5	hired vehicles	
6	Workers' Compensation	Statutory
7	Employers' Liability Insurance	\$1,000,000 per occurrence
8	Professional Liability Insurance	\$1,000,000 per claim \$1,000,000
9		aggregate
10		with an endorsement providing
11		an additional (excess)
12		\$1,000,000 limit applicable
13		specifically to the Dana Point
14		Harbor renovation services
15		provided under this agreement.

17		Subcontractor Coverage Requirements	
18	Coverage	Minimum Limits	
19	Commercial General Liability	\$1,000,000 combined single	
20	including broad form property	limit per occurrence	
21	damage and contractual liability	\$2,000,000 aggregate	
22			
23	Automobile Liability including	\$1,000,000 combined single	
24	coverage for owned, non-owned and	limit per occurrence	
25	hired vehicles		
26	Workers' Compensation	Statutory	

Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claim
	\$1,000,000 aggregate

A-E shall maintain the Professional Liability insurance for a period of two years subsequent to the completion and acceptance by COUNTY of all the work under this agreement.

The County of Orange and the State of California shall be added as an additional insured on all insurance policies required by this AGREEMENT with respect to work done by the A-E under the terms of this AGREEMENT (except Workers' Compensation/Employers' Liability, and Professional Liability). An additional insured endorsement evidencing that the County of Orange and the State of California is an additional insured shall accompany the Certificate of Insurance. The inclusion of the County of Orange and the State of California as an additional insured shall not affect any right which such organization would have as a claimant if not so included.

All insurance policies required, with exception of the professional liability policy, shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the A-E's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this AGREEMENT shall give the County of Orange 30 days notice in the event of cancellation and 10 days notice in the event of cancellation due to non-payment. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which

1 edits the pre-printed ACORD certificate:

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

5 All insurance policies required by this AGREEMENT shall waive all
6 rights of subrogation against the County of Orange, members of the Board of
7 Supervisors, its elected and appointed officials, officers, agents and
8 employees when acting within the scope of their appointment or employment, and
9 the State of California.

10 The Commercial General Liability policy shall contain a
11 severability of interests clause.

12 The A-E is aware of the provisions of Section 3700 of the
13 California Labor Code which requires every employer to be insured against
14 liability for Workers' Compensation or be self-insured in accordance with
15 provisions of that code. The A-E will comply with such provisions and shall
16 furnish the COUNTY satisfactory evidence that the A-E has secured, for the
17 period of this AGREEMENT, statutory Workers' Compensation insurance and
18 Employers' Liability insurance with minimum limits of \$1,000,000 per
19 occurrence.

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

23 COUNTY expressly retains the right to require A-E to increase or
24 decrease insurance of any of the above insurance types throughout the term of
25 this agreement. Any increase or decrease in insurance will be as deemed by
26 County of Orange Risk Manager as appropriate to adequately protect COUNTY.
Changes to insurance requirement shall be mutually agreed upon by A-E and

1 COUNTY. Cost of increased required coverage shall be at COUNTY'S expense.

2 COUNTY shall notify A-E in writing of changes in the insurance
3 requirements. If A-E does not deposit copies of acceptable certificates of
4 insurance and endorsements with COUNTY incorporating such changes within
5 thirty days of receipt of such notice, this AGREEMENT may be in breach without
6 further notice to A-E, and COUNTY shall be entitled to all legal remedies.

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

10 **M. Indemnification**

11 A-E agrees to indemnify, defend with counsel approved in writing by
12 COUNTY, and hold COUNTY, their elected and appointed officials, officers,
13 employees, agents and those special districts and agencies which COUNTY'S
14 Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES")
15 harmless from any claims, demands or liability of any kind or nature,
16 including but not limited to personal injury or property damage, arising from
17 or related to A-E's negligence or willful misconduct under this AGREEMENT. If
18 judgment is entered against A-E and COUNTY by a court of competent
19 jurisdiction because of the concurrent active negligence of A-E and COUNTY or
20 COUNTY INDEMNITEES, A-E and COUNTY agree that liability will be apportioned as
21 determined by the court.

22 **N. Award of Construction Contract**

23 A-E is hereby informed of COUNTY's policy of not awarding a
24 construction contract to a contractor or subcontractor who performed
25 architectural-subcontractor services for the design of this PROJECT or is a
26 subcontractor or parent of a firm that performed architectural-engineering
services for the design of this PROJECT.

1 **O. Amendments**

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

7 **P. Successors and Assigns**

8 The terms and provisions of this AGREEMENT shall be binding upon
9 and inure to the benefit of the parties hereto and their successors and
10 assigns.

11 **Q. Entirety**

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

14 **R. Severability**

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

19 **S. Applicable Law**

20 This AGREEMENT shall be construed and enforced in accordance with
21 California Law.

22 **T. Binding Obligation**

23 The parties to this AGREEMENT represent and warrant that this
24 AGREEMENT has been duly authorized and executed and constitutes the legally
25 binding obligation of their respective organization or entity enforceable in
26 accordance with its terms.

U. Governing Law and Venue

1 This AGREEMENT has been negotiated and executed in the State
2 of California and shall be governed by and construed under the laws of
3 the State of California. In the event of any legal action to enforce or
4 interpret this AGREEMENT, the sole and exclusive venue shall be a court
5 of competent jurisdiction located in Orange County, California, and the
6 parties hereto agree to and do hereby submit to the jurisdiction of such
7 court, notwithstanding Code of Civil Procedure, Section 394.

8 The parties specifically agree that by soliciting and entering into
9 and performing services under this AGREEMENT, the A-E shall be deemed to
10 constitute doing business within Orange County from the time of solicitation
11 of work, through the period when all work under this AGREEMENT is completed,
12 and continuing until the expiration of any applicable limitations period.
13 Furthermore, the parties have specifically agreed, as part of the
14 consideration given and received for entering into this AGREEMENT, to waive
15 any and all rights to request that an action be transferred for trial to
16 another County under Code of Civil Procedure, Section 394.

17 **V. Child Support Enforcement Requirements**

18 To comply with child support enforcement requirements of the
19 COUNTY, within 30 days of notification of selection for award of PROJECT, A-E
20 agrees to furnish to the DIRECTOR the following:

21 1. In the case of an individual A-E, his/her name, date of birth,
22 Social Security number, and residence address;

23 2. In the case of an A-E doing business in a form other than as an
24 individual, the name, date of birth, Social Security Number, and residence
25 address of each individual who owns an interest of 10 percent or more in the
26 A-E's contracting entity;

1 3. A certification that the A-E has fully complied with all the
2 applicable federal and state reporting requirements regarding its employees;
3 and

4 4. A certification that the A-E has fully complied with all lawfully
5 served Wage and Earnings Assignment Orders and Notices of Assignment and will
6 continue to so comply.

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

10 Failure of the A-E to timely submit the data and/or certifications
11 required above or to comply with all federal and state reporting requirements
12 for child support enforcement or to comply with all lawfully served Wage and
13 Earnings Assignment Orders and Notices of Assignment, shall constitute a
14 material breach of the AGREEMENT. Failure to cure such breach within 60
15 calendar days of notice from COUNTY shall constitute grounds for termination
16 of the AGREEMENT.

17 **W. Ownership of Documents**

18 All data, including but not limited to letters, reports, files, plans,
19 drawings, specifications, proposals, sketches, diagrams and calculations,
20 prepared by A-E and/or anyone acting under the supervision of A-E pursuant to
21 this AGREEMENT, shall become the property of COUNTY upon preparation by A-E
22 and may be used by the COUNTY as it may require without additional cost to the
23 COUNTY. COUNTY shall not be limited in any way to its use thereof at any
24 time, including the release of this data to third parties. A-E shall be held
25 harmless for release of such data as may be prepared or created under this
26 AGREEMENT to any third party. If A-E and/or anyone acting under the
supervision of A-E should later desire to use any of the data prepared in

1 connection with this AGREEMENT, A-E shall first obtain the written approval of
2 COUNTY.

3 **X. Confidentiality**

4 All ideas, memoranda, specifications, plans, procedures, drawings,
5 descriptions, and all written or other information submitted to A-E in
6 connection with the performance of this AGREEMENT shall be held confidential
7 by A-E and/or anyone acting under the supervision of A-E and shall not,
8 without the prior written consent of COUNTY, be used for any purposes other
9 than the performance of the SERVICES described in Exhibit A, nor be disclosed
10 to any person, partnership, company, corporation or agency, not connected with
11 the performance of the SERVICES. Nothing furnished to A-E which is generally
12 known among flood control COUNTYS in Southern California shall be deemed
13 confidential. A-E and/or anyone acting under the supervision of A-E shall not
14 use COUNTY name or insignia, photographs of the work, or any other publicity
15 pertaining to the work in any magazine, trade paper, newspaper, or other
16 medium without the express written consent of COUNTY.

17 **Y. Publication**

18 No copies, sketches or graphs, including graphic art work,
19 resulting from performance or prepared in connection with the SERVICES, are to
20 be released by A-E and/or anyone acting under the supervision of A-E to any
21 person, partnership, company, corporation, or agency, without prior written
22 approval by COUNTY, except as necessary for the performance of the SERVICES.
23 All press releases, including graphic display information to be published in
24 newspapers, magazines, etc., are to be administered only by COUNTY unless
25 otherwise agreed to in writing by both parties.

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

1 A-E shall keep an accurate record of time expended by A-E and/or
2 consultants employed by A-E in the performance of this AGREEMENT. Within ten
3 (10) days of COUNTY's written request, A-E shall allow COUNTY or authorized
4 State or Federal agencies or any duly authorized representative to have the
5 right to access, examine, audit, excerpt, copy or transcribe any pertinent
6 transaction, activity, time cards or other records relating to this AGREEMENT.
7 A-E shall keep such material, including all pertinent cost accounting,
8 financial records and proprietary data for a period of three (3) years after
9 termination or completion of the AGREEMENT or until resolution of any claim or
10 dispute between the PARTIES, whichever is later. Should A-E cease to exist as
11 a legal entity, records pertaining to this AGREEMENT shall be forwarded within
12 a reasonable period of time not to exceed sixty (60) days to its successor in
13 interest or surviving entity in a merger or acquisition, or, in the event of
14 liquidation to COUNTY.

15 **AA. Notices**

16 Any and all notices, requests demands and other communications
17 contemplated, called for, permitted, or required to be given hereunder shall
18 be in writing, except through the course of the parties' project managers'
19 routine exchange of information and cooperation during the terms of the work
20 and services. Any written communications shall be deemed to have been duly
21 given upon actual in-person delivery, if delivery is by direct hand, or upon
22 delivery on the actual day of receipt or no greater than four calendar days
23 after being mailed by US certified or registered mail, return receipt
24 requested, postage prepaid, whichever occurs first. The date of mailing shall
25 count as the first day. All communications shall be addressed to the
26 appropriate party at the address stated herein or such other address as the

1 parties hereto may designate by written notice from time to time in the manner
2 aforesaid.

3 For A-E

4 Cash & Associates

5 5772 Bolsa Avenue, Suite 100

6 Huntington Beach, CA 92649

7 Attn: Randy Mason

8 Phone: (714) 895-2072

9 E-mail: rhm@cashassociates.com

10 Fax: (714) 895-1291

11 For COUNTY:

12 Dana Point Harbor Department

13 24650 Dana Point Harbor Drive

14 Dana Point, CA 92629

15 Attn: Director

16 Phone: (949) 923-3798

17 Fax: (949) 923-3792

18 **AB. Attorney's Fees**

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

22 **AC. Interpretation**

23 This AGREEMENT has been negotiated at arm's length and between
24 persons sophisticated and knowledgeable in the matters dealt with in this
25 AGREEMENT. In addition, each PARTY has been represented by experienced and
26 knowledgeable independent legal counsel of their own choosing, or has
knowingly declined to seek such counsel despite having the opportunity to do

1 so. Each PARTY further acknowledges that they have not been influenced to any
2 extent whatsoever in executing this AGREEMENT by any other PARTY hereto or by
3 any person representing them, or both. Accordingly, any rule of law
4 (including California Civil Code Section 1654) or legal decision that would
5 require interpretation of any ambiguities in this AGREEMENT against the PARTY
6 that has drafted it is not applicable and is waived. The provisions of this
7 AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of
8 the PARTIES and this AGREEMENT.

9 **AD. Headings**

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

14 **AE Acceptance**

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

18 **AF Consent to Breach not Waiver**

19 No term or provision of this AGREEMENT shall be deemed waived and
20 no breach excused, unless such waiver or consent shall be in writing and
21 signed by the party claimed to have waived or consented. Any consent by any
22 party to, or waiver of, a breach by the other, whether express or implied,
23 shall not constitute consent to, waiver of, or excuse for any other different
24 or subsequent breach.

25 **AG Remedies Not Exclusive**

26 The remedies for breach set forth in this AGREEMENT are cumulative
as to one another and as to any other provided by law, rather than exclusive;

1 and the expression of certain remedies in this AGREEMENT does not preclude
2 resort by either party to any other remedies provided by law.

3 **AH Independent Contractor**

4 A-E shall be considered an independent contractor and neither A-E, its
5 employees, nor anyone working under A-E shall be considered an agent or an
6 employee of COUNTY. Neither A-E, its employees nor anyone working under A-E
7 shall qualify for workers' compensation or other fringe benefits of any kind
8 through COUNTY.

9 **AI Bills and Liens**

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

17 **AJ Changes**

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

20 **AK Changes in Ownership**

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

26 **AL Force Majeure**

1 A-E shall not be assessed with damages or unsatisfactory
2 performance penalties during any delay beyond the time named for the
3 performance of this AGREEMENT caused by any act of God, war, civil disorder,
4 employment strike or other cause beyond its reasonable control, provided A-E
5 gives written notice of the cause of the delay to COUNTY within 36 hours of
6 the start of the delay and A-E avails himself of any available remedies.

7 **AM Compliance with Laws**

8 A-E represents and warrants that services to be provided under this
9 AGREEMENT shall fully comply, at A-E's expense, with all standards, laws,
10 statutes, restrictions, ordinances, requirements, and regulations
11 (collectively "laws"), including, but not limited to those issued by COUNTY in
12 its governmental capacity and all other laws applicable to the services at the
13 time services are provided to and accepted by COUNTY. A-E acknowledges that
14 COUNTY is relying on A-E to ensure such compliance, and pursuant to the
15 requirements of the indemnification paragraph above, A-E agrees that it shall
16 defend, indemnify and hold COUNTY and COUNTY indemnitees harmless from all
17 liability, damages, costs and expenses arising from or related to a violation
18 of such laws.

19 **AN Terms and Conditions**

20 A-E acknowledges that it has read and agrees to all terms and
21 conditions included in this AGREEMENT.

22 **AO Calendar Days**

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

25 **AP Breach of Contract**

26 The failure of the A-E to comply with any of the provisions,
covenants or conditions of this AGREEMENT shall be a material breach of this

1 AGREEMENT. In such event the COUNTY may, and in addition to any other remedies
2 available at law, in equity, or otherwise specified in this AGREEMENT:

3 1. Afford the A-E written notice of the breach and ten calendar
4 days or such shorter time that may be specified in this AGREEMENT within which
5 to cure the breach;

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

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

10 **AQ Default**

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

25 In the event the A-E shall fail to make prompt delivery as
26 specified of any equipment or service, the same conditions as to the rights of

1 the COUNTY to purchase on the open market and to reimbursement set forth above
2 shall apply, except as otherwise provided in this AGREEMENT.

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

7 Default shall include failure to carry out any of the requirements
8 of this AGREEMENT, including, but not limited to not providing enough properly
9 skilled workers or proper materials, persistently disregarding laws and or
10 ordinances, not proceeding with the work as agreed to herein, or otherwise
11 substantially violating any provision of this AGREEMENT. Upon termination of
12 the AGREEMENT with A-E, the COUNTY may begin negotiations with a third-party
13 A-E to provide goods and/or services as specified in this AGREEMENT.

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

17 **AR Conflict of Interest Contractor Personnel**

18 The A-E shall exercise reasonable care and diligence to prevent any
19 actions or conditions that could result in a conflict with the best interests
20 of the COUNTY. This obligation shall apply to the A-E; the A-E's employees,
21 agents, and relatives; sub-tier contractors; and third parties associated with
22 accomplishing work and services hereunder. The A-E's efforts shall include,
23 but not be limited to establishing precautions to prevent its employees or
24 agents from: making, receiving, providing or offering gifts, entertainment,
25 payments, loans or other considerations which could be deemed to appear to
26 influence individuals to act contrary to the best interests of the COUNTY.

AS Title to Data:

1 All materials, documents, data or information obtained from the
2 COUNTY data files or any COUNTY medium furnished to the A-E in the performance
3 of this AGREEMENT will at all times remain the property of the COUNTY. Such
4 data or information may not be used or copied for direct or indirect use by
5 the A-E after completion or termination of this AGREEMENT without the express
6 written consent of the COUNTY. All materials, documents, data or information,
7 including copies furnished by COUNTY and loaned to A-E for his temporary use,
8 must be returned to the COUNTY at the end of this AGREEMENT unless otherwise
9 specified by the DIRECTOR.

10 **AT Availability of Funds**

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

16 **AU Contingency of Funding**

17 A-E acknowledges that funding or portions of funding for this
18 AGREEMENT may also be contingent upon receipt of funds from, and/or
19 appropriation of funds by, the Department of Boating and Waterways to COUNTY.
20 If such funding and/or appropriations are not forthcoming, or are otherwise
21 limited, COUNTY may immediately terminate or modify this AGREEMENT without
22 penalty.

23 **AV Contract Construction**

24 The parties acknowledge that each party and its counsel have
25 reviewed this AGREEMENT and that the normal rule of construction to the effect
26 that any ambiguities are to be resolved against the drafting party shall not

1 be employed in the interpretation of this AGREEMENT or any amendment or
2 exhibits hereto.

3 **AW Waiver of Jury Trial**

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

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

3 Cash and Associates

4
5 Date: 7/25/06

6 By Randy Mason
7 Randy Mason, President

8 Date: 7/25/06

9 By Randy Mason
10 Randy Mason, Assistant Treasurer

11 County of Orange

12 Date: _____

13 By _____
14 Chair of the Board of Supervisors

15 **SIGNED AND CERTIFIED THAT A COPY OF THIS**
16 **AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF**
17 **THE BOARD.**

18 Date: _____

19 By _____
20 Darlene J. Bloom
21 Clerk of the Orange County
22 Board of Supervisors
23 Orange County, California

24 Date: _____

25 **APPROVED AS TO FORM:**

26 **COUNTY COUNSEL**
ORANGE COUNTY, CALIFORNIA

27 By Janis P. Torres 7/26/06
28 Deputy
29 COUNTY Agreement w/Prof.Liab.

AGREEMENT D06-053
EXHIBIT A – SCOPE OF WORK

The overall project is characterized by the following major elements:

1. Building, Roadway and Landscape Upgrades (By Others)
2. Infrastructure Utility Upgrades (By Others)
3. Seawall Evaluations and Potential Upgrades
4. Replacement of Existing Floating Docks and Associated Marine Facilities

BACKGROUND

Floating Docks:

It is COUNTY's intention to redevelop the slip mix for Dana Point Harbor, and in particular, change the mix design to a larger boat size mix, thus reducing the overall number of wet boat slips within the harbor area. The reason for this reduction in wet boat slips is based on boater market trends, as well as the inclusion of a dry boat storage and launching facility.

A-E shall develop a conceptual layout for a marina to include a variety of mix designs including (1) one or more market-driven mixes, (2) latest California Coastal Commission approval requirements, and (3) replacement in-like-kind that accommodates ADA and DBAW requirements.

Integration of Marina with Landside Improvements:

A-E shall design the marina in concert with the landside improvements currently planned by other consultants under contract with COUNTY. Interface will include parking and landscaping, utility distribution, restrooms, gangway placement and support, railings and gates, and security. In coordination with the COUNTY's landside architects and engineers, A-E shall establish common points of connections and limits and interface of all joining work.

Peer Group Oversight:

A-E shall establish a Peer Review Group of three committee members approved in writing by COUNTY, experienced in marina planning and design. A-E shall meet quarterly with this group to discuss project progress and design, permitting, and project phasing to ensure that all project elements meet the expectations of COUNTY. A-E shall provide COUNTY with a written schedule of these meetings and will invite COUNTY to attend these meetings. A written transcript of items discussed and actions taken, or to be taken, will be prepared by A-E and distributed to the appropriate parties for review within two weeks following each of these meetings.

Construction Cost Estimates:

At the completion of each major phase of design development, A-E shall provide COUNTY an estimate of probable construction cost. These estimates will be based on information assembled on marina projects recently constructed. COUNTY acknowledges there may be only a limited number of dock system suppliers that will bid this project, and with a limited number of bidders, pricing can fluctuate based on market conditions and/or material cost volatility.

Design/Construction Management Team

AGREEMENT D06-053 EXHIBIT A

Firm	Role
Leighton Consulting, Inc. - Prepared Previous Dana Point Reports for County	Geotechnical
LSA Associates - Previous Dana Point Experience	Environmental/EIS/EIR
Coastal Management Resources - Previous Dana Point Experience	Marine Biology
Bill Carr Surveys, Inc.	Vertical/Horizontal Surveys & Guide Pile Locations
Gahagan & Bryant Associates, Inc.	Hydrographic Surveys
MBI Media	Community Relations
WSM Consulting - Formerly Chief Construction Manager, Concept Marine Associates	Construction Management

SCOPE OF WORK

In accordance with the Schedule listed below, A-E shall:

PART A. CONCEPT DEVELOPMENT/STUDIES & REPORTS

1. Conceptual Development - Marina Layouts & Community Dialog

A-E shall prepare floating dock layouts for Dana Point Harbor (DPH) East Basin and west basin that incorporate current California Coastal Commission policy as well as providing for ADA Compliant Disabled Access to the docks and facilities. All dock layouts will be accompanied by their respective construction cost estimates. Layouts will be based on State of California DBAW Guidelines, as well as industry trends documented by A-E. Work associated with this effort will include the evaluation of previous reports, layouts, revenue and cost documents, and results of meetings with the COUNTY to determine requirements and system preferences.

A-E shall prepare two primary layouts for each of the four major zones of the overall marina, with two to four additional optional layouts required for each primary layout. Up to 30 marina layouts shall be provided during the Conceptual Development phase. Task shall include tabulations for the required vehicle parking spaces that must be provided on the site.

COUNTY shall provide A-E with an electronic file in AutoCAD 2000/2005 compatible format of the existing docks and guide piles, seawalls, bulkhead/pierhead and parcel lines for use as a background for all layout work.

Community Input. A-E shall host a series of community workshops geared to present the existing and proposed marina layouts and amenities, and elicit comments from the community. A-E shall handle community communications,

Horizontal/Vertical Control/Hydrographic Surveys. A-E shall prepare a comprehensive program to survey the marina site this project. Tasks shall include horizontal control for dock system location as well as for gangway abutment structures; vertical control for setting top of seawall elevations, gangway platforms and top of guide pile elevations. A-E shall provide a hydrographic survey to determine the location of "high" spots on the bay bottom and determine if removals are required to provide the water depth necessary for new marina layouts.

2. Concept Development – Seawalls/Slope Protection

A-E shall prepare a Pilot Investigation Program to assess the seawall/slope protection as well as to establish potential supplemental procedures for additional investigation, as follows:

- (a) Conduct investigations on four representative seawall panels, two in the East Basin and two in the West Basin. Sections will be selected that represent areas of known distress, as well as random areas where distress is not known to be present. The approach shall be as follows:

Item 1: Concrete and Void Testing/Observations:

AGREEMENT D06-053 EXHIBIT A

Wall Coring. Eight(8) total representative concrete core samples for petrographic analysis and testing. Concrete will be tested to determine structural integrity and chemistry. A written report summarizing the concrete testing and structural integrity shall be provided by A-E to COUNTY within 30 days of the completion of the study.

Above & Underwater Inspections. Probe spaces between the joints of panels, as well as within existing weepholes, if accessible. Evaluate settled or heaved concrete panels and determine cause. The purpose of these observations will be to identify voids underneath the concrete slabs and potential cause(s). Upon completion of the underwater inspections a written report summarizing findings shall be provided by A-E to COUNTY within 30 days of the completion of the study.

Item No. 2: Geotechnical Evaluation/Slope Stability:

A-E shall identify the subsurface conditions of the site in order to evaluate the stability of the seawall. A-E shall perform the following tasks:

- (a) Review of pertinent existing geotechnical reports and geology maps for the project site that are available in A-E/subconsultant's in-house library.
- (b) Subsurface exploration consisting of advancing two Cone Penetration Tests (CPT's) at each pilot section for a total of eight CPT's. The CPT's will be located near the top of the seawall and will be advanced to 30 feet or refusal, whichever is shallower. The CPT locations will be marked and Underground Service Alert (USA) will be contacted for utility clearances.
- (c) Geotechnical analysis of collected data including:
 - (1) Characterization of earth materials and groundwater level;
 - (2) Site seismicity, including location and characteristic of known faults near the site and the potential for fault rupture through the site and horizontal peak ground acceleration;
 - (3) Stability analyses of the existing slopes using the limit equilibrium method for static and seismic conditions. If the factor of safety is below the generally accepted minimum, a deformation analysis will be performed to assess the potential magnitude of slope deformation under seismic loading. The analysis will be performed using the Newmark's method;
 - (4) Evaluation of the potential for lateral spreading of the seawall due to liquefaction. Lateral spreading generally occurs when the liquefiable zone is continuous and free to move along gently sloping ground toward an unconfined area, such as the harbor. The analysis will assess this potential and provide an estimate of the magnitude of the lateral spreading, if any;
 - (5) Preliminary geotechnical recommendations to mitigate the potential instability, if necessary;
 - (6) Axial and lateral load capacity for the gangway guide piles and load deflection curves and analysis for guide pile selection and installation; and

AGREEMENT D06-053 EXHIBIT A

- (7) Recommendations for earthwork and site grading.
 - (d) Preparation of a written report presenting findings, conclusions and recommendations shall be provided by A-E to COUNTY within 30 days of the completion of the study.
3. Concept Development – Special Surveys and Reports
- (a) Marine Biology Survey. A marine biologist will be engaged by A-E to provide an eelgrass and invasive algae report. At this time, and based on previous surveys, it is assumed that neither eelgrass nor an invasive algae exist in the project areas, and no subsequent effort beyond the initial survey and report will be needed.
 - (b) Surveys. A-E shall provide both the horizontal/vertical control surveys on land, and possibly the hydrographic survey of the bay bottom. Survey shall locate all existing piles, to assist in the location of all new piles.

Additional hydrographic surveying of the bay bottom to augment COUNTY's existing Harbor Dredge Project hydrographic survey. Extent of A-E's hydrographic survey shall be limited to the fee schedule listed below and as mutually agreed upon in writing by A-E and COUNTY.
 - (c) Geotechnical Pile Recommendations. A-E shall provide recommendations for guide pile installation. A-E shall provide recommendations for both driven steel pile and pre-drilled concrete pile options.

Work associated with the Concept Phase shall include the final layout of the dock system and a "Basis of Design" narrative document describing the necessary project components, utility systems and fixtures, phasing and overall performance design requirements for the marina.

Part B. 40%, 80% & FINAL CONSTRUCTION DOCUMENTS

1. Dana Point East & West Marinas – Construction Documents

The documentation for the rebuilding of the recreational floating docks and supporting facilities shall be provided by A-E using a combination of Performance and Prescriptive Specifications. Design will be provided in standard Preliminary and Construction Document Phases, to allow COUNTY review and comments. A-E tasks shall include;

- (a) Based on the approved layout resulting from the Concept Design Phase, design the new marina using both Prescriptive and Performance Specification formats, based on the desired proprietary dock systems available. Documents will be prepared for competitive bid process.
- (b) Prepare a series of phasing plans that minimize the number of displaced boats during any one phase. A-E shall investigate the possibility of providing temporary docks at another location within the harbor to minimize the impact on displaced boats.

AGREEMENT D06-053 EXHIBIT A

- (c) Prepare plans for removal and replacement of all existing guide piles new guide piles. Plans and specifications shall include provisions to cut existing piles below the existing mud line within the harbor if removal is not possible. A-E shall provide calculations, layout and structural design for all new guide piles including pile design information.
- (d) Meet with the COUNTY regularly on a schedule to be agreed upon between COUNTY and A-E to discuss design, construction material selection, installation methods, marina amenities and infrastructure required to support the marina complex.
- (e) Provide full Prescriptive and Performance Specification documents for all components of the marina renovation project.

The Performance Specifications shall be used for components of the marina that are traditionally proprietary systems, such as the dock structural and floatation systems, aluminum access gangways and sewage pump out facilities.

Prescriptive Specifications, drawings and calculations will be used to document guide piles, elevated gangway access platforms, electrical and water systems for the floating docks. Utility work shall also include cable television and sewage pump-out facilities. COUNTY shall provide the A-E with existing water system pressure and flow rates, to be used to calculate the dock system requirements.

A-E shall provide book specifications in a CSI format for the project outlining all major construction materials, requirements and execution procedures. In addition, construction Best Management Practices will be made part of the specification package.

Gangway Abutments & ADA Platforms. A-E shall provide design, plans, and specifications for required gangways, gangway abutments and ADA platforms. Where required at new gangway abutment locations, new fencing will be provided to match existing, with gates and security access. Where existing gangway gates are removed, new fencing, to secure removed gates will be provided.

- (g) Dock Accessories & Fixtures: A-E shall provide layouts and details for dock accessories and fixtures to include dock boxes, fire cabinets, fire standpipes, cleats, rub strips and bumpers, dock wheels, ladders, dinghy racks, life rings, etc.
- (h) Restroom Bldg ADA Compliance Retrofits: A-E shall provide layout and details for retrofit of each restroom, include permit processing. Task assumes that main partition walls of the restroom complex will not change, and a reduction of restroom fixtures is allowed to accommodate ADA space planning. Task does not include, maintaining or increasing the existing count of restroom fixtures. Task assumes two (2) distinct restroom layouts will represent all restroom locations around the marina. It is assumed that all internal fixtures, partitions, amenities and finishes of the restroom buildings will be demolished and replaced with new fixtures,

AGREEMENT D06-053 EXHIBIT A

construction and finishes.

- (i) Site Parking Lot Lighting: A-E shall provide layout and details for replacing all light poles and fixtures in the four primary marina parking lot areas. Provide Title 24 calculations and energy efficient lamps for all new work. Provide locations and design for new power service and switchgear for the new marina, to meet the demands of modern boats, per State of California guidelines. Coordinate new services with the So. Cal Edison. Task does not include parking lot and/or landscaping rework.
- (j) Parking Lot ADA Compliance: A-E shall provide plans for striping, signage and standard ramps for ADA-compliance, four(4) ADA gangways for the four marina zones. four(4) ADA parking lot re-arrangements adjacent to respective gangways.
- (k) A-E shall provide Phasing Plans and potential layouts and specifications for temporary slips, to minimize the amount of boat displacement and inconvenience to the boating public.
- (l) A-E shall provide all necessary copies of drawings and specifications for permit processing and the COUNTY's review and use, as well as for the Bid Process.

2. Supplemental EIR Preparation

A-E shall prepare a Supplemental EIR (SEIR), tiering-off of the certified EIR. The following items will be provided for completion of the SEIR process and satisfy CEQA requirements:

- Initial Study/Notice of Preparation
- Meetings (Team & Public Information) x 15
- EIR Startup and Project Issue Identification
- Notices
- Resolution/Findings
- Copies/Reimbursable Expenses
- Response to Comments

The SEIR will cover the following topics:

- Geology/Soils
- Hydrology/Water Quality, primarily during construction and also in the after condition
- Parking and Access, Emergency Access and Construction Traffic
- Air Quality during construction-haul trips, equipment, grading, pile-driving
- Noise, primarily construction-includes haul trips and equipment

AGREEMENT D06-053 EXHIBIT A

- Biology, both terrestrial and marine (migratory and water associated bird impacts)
- Aesthetics, primarily of concern if the bulkhead wall is replaced
- Recreation-Coastal Commission Issues regarding fewer slips, coastal access, and parking, especially if there is paid parking
- Land Use – address any project changes that would modify the Coastal Act consistency conclusions in the certified EIR
- Hazards and Hazardous Materials, related to storage of materials; also tsunami hazards will be discussed
- Prepare an air quality analysis addressing construction-related impacts only (haul trips; construction equipment). In addition, a noise analysis will be provided addressing only construction-related impacts; i.e. debris/material hauling & pile driving

SEIR shall not include Agriculture, Traffic Circulation, Cultural Resources, Mineral Resources and Public Services/Utilities.

Part C. Permit Processing

- (a) A-E shall prepare all necessary applications and supporting documentation for the agency review process. This process generally involves the following agencies:
 - County of Orange
 - County of Orange Public Works
 - County of Orange Fire Authority
 - County of Orange Resources Development & Management Department
 - California Coastal Commission
 - California State Lands Commission
 - State of California, Department of Fish and Game
 - California Regional Water Quality Control Board
 - South Coast Water District
 - City of Dana Point
 - Dana Point Harbor Department – Orange County Sheriff
 - Department of the Army, Corps of Engineers
 - National Marine Fisheries
 - U.S. Fish and Wildlife
 - U.S. Coast Guard
- (b) Amendment to the Program EIR to reflect the nature of the “Tiered” proposed marina plan. A-E shall provide and submit these documents to the appropriate agencies and public for review, comment and approval.
- (c) A-E shall meet with the appropriate agencies as necessary to discuss the nature of the project, respond to agency inquiries, and expedite the approval process.

AGREEMENT D06-053 EXHIBIT A

- (d) It is understood that A-E attendance at California Coastal Commission meetings conducted outside of Los Angeles/Long Beach area requiring special travel and lodging arrangements is not included in this scope of service and would be considered an extra service.

Part D. Bid Process

- (a) A-E shall prepare a list of contractors and suppliers capable of providing quality products and installation of the marina facilities.
- (b) A-E shall package the Bid Documents and distribute to the qualified contractors, as well as schedule a job walk that allows the bidders to understand the various physical and contractual conditions regarding the bid package. All bid package copying and printing shall be provided by the COUNTY.
- (c) A-E shall respond to bidders' questions during the bid period and issue Addenda during this process, as necessary, to inform bidders of changed bid conditions during the bidding process.
- (d) A-E shall evaluate Bidder's qualifications.
- (e) A-E shall compare and evaluate all submitted bids and make recommendations to the COUNTY regarding the lowest responsive bid package.
- (f) A-E shall assist the COUNTY during any negotiations, if requested by COUNTY. This assistance shall include a detailed discussion of the contents of the bid package and a verification that all items specified in the bid documents shall be provided by the contractor.
- (g) Upon request of COUNTY, A-E shall provide input to the drafting of the agreement between COUNTY and the successful bidder, .

Part E. Construction Surveillance

A&E Standard Construction Support Services for a three year construction duration:

- (a) A-E shall review all contractor submitted shop drawings to verify that design documents have been followed.
- (b) A-E shall respond to contractor Requests for Information (RFI's). Response to RFI's will consider the possible cost implications of any given decision and response. If a change in construction cost is the possible result of an impending RFI response, such responses and impacts will be discussed with the COUNTY prior to the formal communications with the Contractor.
- (c) A-E shall prepare sketches to clarify details and/or to resolve unforeseen conditions.

AGREEMENT D06-053 EXHIBIT A

- (d) A-E shall inform State and Federal agencies of the project status, in conjunction with permit requirement, as necessary. COUNTY shall require its contractor to coordinate with all local agencies.
- (e) A-E shall evaluate requests for payments and confirm all subcontractor preliminary lien releases, if necessary.
- (f) Site Visits During Construction. Periodic site visits will be made during the construction period by A-E to assess progress and verify that the intent of the drawings and performance specifications are followed. Divergence with the plans and specifications will be communicated to the COUNTY for action. COUNTY shall make all cost and schedule decisions, with recommendations from A-E.. A-E will act as an agent and advisor and will not give the contractor specific direction, unless authorized by COUNTY.

SERVICES PROVIDED BY OTHERS OR EXCLUDED AT THIS TIME

1. All application fees to the various permitting agencies will be borne by the COUNTY.
2. Environmental Studies, Additional Marine Biology Assessment/Reports beyond those outlined in this proposal, or ocean engineering studies.
3. Basin perimeter gangway area architectural entry features/structures/enclosures, unless done by others or added to the scope of work at a later time.

FEE BASED ON TIME AND MATERIALS

CONCEPT DEVELOPMENT PHASE:

General

Item No. 1:	General Liability Insurance	\$ 25,000	
Item No. 2:	Professional Liability Insurance	<u>\$ 175,000</u>	
Subtotal Items 1 and 2:			\$200,000

Seawall Study Pilot Program:

Concrete Testing & Void Assessment:

Item No. 3:	Wall Coring & Petrographic Analysis	\$ 30,000	
Item No. 4:	Above & Underwater Testing & Inspections	\$ 24,000	

Geotechnical Evaluations:

Item No. 5:	Geotechnical Study/Report	\$ 33,500	
	Study Program Management	<u>\$ 12,500</u>	
Subtotal Items 3 Through 5:			\$100,000

Marina Layout Development/Public Workshops/Studies & Reports:

Item No. 6:	Marina Layout Services (East/West Basins)	\$ 50,000	
Item No. 7:	Community Workshops (including graphics & meeting documentation/action)	\$ 35,000	
Item No. 8:	Geotechnical Guide Pile & Platform Recommendations (Based on fieldwork completion of Task 3 above)	\$ 10,000	
Item No. 9:	Marine Biology Report(s)	\$ 17,500	
Item No. 10	Topographic Surveying	\$ 20,000	
Item No. 11	Hydrographic surveying (Range Depending on Extent of Surveying Required):	\$ 16,500	
Item No. 12	Bird Migration/Nesting Surveys (4 @ \$2,200/ea: <u>\$ 8,800</u>		
Subtotal Marina Layout/Workshops/Studies/Reports:			<u>\$ 157,800</u>

GRAND TOTAL CONCEPT DEVELOPMENT PHASE: \$ 457,800

40% / 80% / FINAL DOCUMENTS

Item No. 13A:	East & West Dock Systems:	\$500,000
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AGREEMENT D06-053 EXHIBIT A

Item No. 13B: Fencing and Gates @ Entrances/Closures:	\$18,000
Item No. 13C: Electrical Lighting/power sitework:	\$74,000
Item No. 13D: ADA Parking Lot Re-arrangements:	\$22,000
Item No. 14: Peer Group Review	\$50,000
Item No. 15: Environmental/EIR Input (LSA)	\$275,000
Restroom ADA Retrofits (Total TI Demo/Rebuild): (For Two (2) Restroom Buildings)	<u>\$ 60,000</u>
GRAND TOTAL 40%/80%/FINAL DOCUMENTS:	\$999,000

PERMIT PROCESSING PHASE

Item No. 16: Permit Processing Assistance	\$45,000
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BID ASSISTANCE SERVICES

Item No. 17: Bid Assistance Services	\$ 20,000
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EXPENSES:

Item No. 18: Copying, Printing, Consumables:	<u>\$ 25,000</u>
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CONCEPT AND DESIGN GRAND TOTAL (excluding Construction & Additional Services):	\$1,546,800
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A&E CONSTRUCTION SERVICES

Item No. 19: A&E Standard Construction Services (3yrs) (Shop Drawings, RFI's, Changed Conditions, etc)	\$150,000
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Item No. 20: Record As-built Drawings and Coordination	<u>\$ 15,000</u>
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Item No. 21: At County's sole discretion and option, Construction Management Services to be identified later and contained in a Board of Supervisor approved Amendment to Agreement.	TBD
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GRAND TOTAL A&E CONSTRUCTION SERVICES:	\$165,000
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CONTINGENCY

Item No. 21: Contingency	<u>\$288,200</u>
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CONTRACT TOTAL.....	\$2,000,000*
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AGREEMENT D06-053 EXHIBIT A

***A-E shall be compensated for tasks under this scope of work on a time and material, not-to-exceed basis in accordance with the this section, and Exhibit B. The \$2,000,000 contract total above does not include fee for Construction Management Services.**

AGREEMENT D06-053 EXHIBIT A

ITEMS EXCLUDED FROM THIS SCOPE OF WORK

1. Seawall and/or Slope Design/Redesign
2. Community Relations Communications Specialist
3. Additional Seawall/Soils Testing:
4. Geotechnical Support During Pile Installation
5. Dredging documentation.
6. Environmental reports and studies, other than those stated in this proposal, including but not necessarily limited to chemical/biological analysis of sediments and landside storm water hydrology studies and report.
7. Printing costs associated with bid package advertisement.
8. Auxiliary booster pump systems for the fire water system, if deemed inadequate based on City water pressure and the geometry of the marina.
9. NPDES permit compliance.
10. Environmental Best Management Practices.
11. On-site waste products handling facilities.
12. Noise surveys during construction are not made part of this proposal, but can be added as an extra service later in the project, if needed.
13. Supervise the Project's contractors and will not have control or charge of and will not be responsible for construction means, methods and techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, or for the acts or omissions of any Project contractors, or any other person performing any of the work on the Project, or for the failure of any of them to perform work on the Project in accordance with the Project's plans and specifications.
14. Provide sampling or testing of materials, other than that noted in the Scope of Work.
15. Take responsibility for the accuracy of data and/or other design work provided to COUNTY, or other design professionals (other than A-E's own consultants), or other reasonably reliable sources.
16. Guarantee cost or other estimates.
17. Enforce or otherwise be responsible for warranties provided by the Project's contractors or material and equipment suppliers.
18. Provide identification or remediation services concerning hazardous materials.
19. Provide services regarding or take responsibility for the investigation, detection, abatement, processing, removal or disposal of hazardous materials, environmental pollutants or toxic waste.
20. Provide services regarding or take responsibility for the investigation and resolution of environmental issues including, but not limited to, environmental assessments, reports or impact statements.

SCHEDULE

AGREEMENT D06-053 EXHIBIT A

A-E services shall be provided as noted below based on COUNTY's Notice to Process and receipt of a signed contract:

Concept Development Phase:	16 to 18 Weeks
Preliminary & Final Design Phases:	26 to 30 Weeks
EIR Processing:	Unknown
Permitting:	4 to 6 Months, estimated
Bid:	As Necessary
Construction Management Services:	As Necessary

AGREEMENT D06-053 EXHIBIT B

July 1, 2006

RATE SCHEDULE FOR ENGINEERING SERVICES
ON A TIME AND MATERIAL BASIS

	<u>HOURLY</u>	<u>OVERTIME</u>
PROJECT DIRECTOR	184.00	184.00
TERMINAL PLANNING SPECIALIST	184.00	184.00
SR. PROJECT MANAGER	173.00	173.00
PROJECT MANAGER	158.00	158.00
SENIOR ENGINEERING SPECIALIST	155.00	155.00
SENIOR ENGINEER/PROJECT ENGINEER	152.00	152.00
PROJECT ARCHITECT	142.00	142.00
ARCHITECT	131.00	131.00
ENGINEER III	137.00	137.00
ENGINEER II	126.00	126.00
ENGINEER I	121.00	121.00
JR ENGINEER	105.00	126.00
COST CONTROL MANAGER	89.00	107.00
PROJECT DESIGNER III	110.00	132.00
PROJECT DESIGNER II	105.00	126.00
PROJECT DESIGNER I	100.00	120.00
SENIOR DESIGNER/CAD OPERATOR III	95.00	114.00
DESIGNER/CAD OPERATOR II	84.00	101.00
DRAFTER/CAD OPERATOR I	74.00	89.00
PERMIT PROCESSOR/COORDINATOR	79.00	95.00
SPECIFICATION PROCESSING	79.00	95.00
WORDPROCESSOR	81.00	97.00
CLERICAL	58.00	70.00

In addition, for direct out-of-pocket expenses (if and when they occur) we quote the following reimbursable items:

- 1) In-House Repro:
 - Blueprint \$.10 to \$1.50 per square foot-depending on type of paper
 - Plotting \$.80 to \$2.00 per square foot-depending on type of paper
- 2) Automobile: 0.47cents per mile
- 3) Travel Expense: at Cost (for travel outside of Orange County)
- 4) Subsistence: Away from home office more than one day: at Cost, not to exceed \$150.00/day/per man.
- 5) Plan Check and Building Permit Fees: at cost
- 6) Third Party Services: at Cost
 - a) Surveying
 - b) Soils investigation
 - c) Materials testing laboratory work
 - d) Consultant and subcontract professional fees
 - e) Outside reproduction services
 - f) Other 3rd-party services as may become necessary
- 7) General Liability and Professional Liability insurance as required by section L – Insurance of this AGREEMENT. A-E shall provide three competitive quotes for all insurance reimbursements.

Payments due under this schedule: Terms are Net - Thirty Days.

Rate Schedule will be revised every other year, ranging from 6% to 10%, to be mutually agreed upon with COUNTY. The first Rate Schedule revision will take place July 1, 2008.