County Executive Office

Memorandum

RECEIVED
06 JUL 26 AM 10:58
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

July 26, 2006

To: Bill Campbell, Chairman

From: Thomas G. Mauk, County Executive Officer

Subject: Exception to the Rule 21

S3/13

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

Agency: Dana Point Harbor
Subject: Agreement No. D06-045, Bryant, Palmer, Soto, Inc.
District 5th

Reason for supplemental: Modifications to Agenda Item.

Concur: Bill Campbell

Bill Campbell, Chairman
Orange County Board of Supervisors

cc: Rob Richardson
Assistant to the County Executive Officer

Agenda Item (Clerk's Use Only)

S3/B

SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

ASR Control

RECEIVED
06 JUL 26 AM 10:58
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

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 Caravalho, (949) 923-3798 Vincent Gin, (949) 923-3794

SUBJECT: Agreement No. D06-045, Bryant, Palmer, Soto, Inc.

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
		Discussion

Budgeted: Yes **Current Year Cost:** $708,500 **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** Yes
Current Fiscal Year Revenue: N/A
Funding Source: Dana Point Tidelands Fund: 100%

Prior Board Action: Minute Order dated July 1, 2003 approving agreement with AC Martin Partners, Inc

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. Approve sole source contract with Bryant, Palmer, Soto, Inc. to continue Architect-Engineer work on Dana Point Harbor Commercial Core Plan.

3. Authorize Director of Dana Point Harbor Department, or designee, to execute an Architect-Engineer Service agreement with Bryant, Palmer, Soto, Inc. in an amount not to exceed $708,500

SUMMARY:

Dana Point Harbor Department requests Board approval of sole source selection of Bryant, Palmer Soto, Inc., for Architect-Engineer Services Agreement D06-045 in an amount not to exceed $708,500, and delegate authority to execute Agreement to Dana Point Harbor Director, or designee.

BACKGROUND INFORMATION:

On July 1, 2003, your Board approved an Architect-Engineer Services Agreement with AC Martin Partners, Inc. for $2,980,000 to implement the Dana Point Harbor Commercial Core Concept Plan. Subsequently, on January 31, 2006, your Board approved the Dana Point Harbor Plan and certified Environmental Impact Report Number 591 for the Harbor Revitalization Plan.

AC Martin Partners, Inc. has since requested that the County of Orange release them from the Architect-Engineer Services Agreement. Dana Point Harbor Department is in critical need of Architect-Engineer services to support the preparation of a Coastal Development Permit application to the California Coastal Commission. A Coastal Development Permit is a process requiring a significant amount of time, and therefore requires an immediate resumption of Architect-Engineer services to stay on schedule. Dana Point Harbor Department will return to your Board with a separate request to terminate AC Martin Partners, Inc.'s agreement. Of the original contract amount of $2,980,000, $1,463,330.42 remain unexpended.

Dana Point Harbor Department recommends the sole source selection of Bryant, Palmer, Soto, Inc. to replace AC Martin Partners, Inc. Bryant, Palmer, Soto, Inc. has worked as a sub-consultant to AC Martin Partners, Inc. on our project and has prepared concept redevelopment plans for Vintage Marina when the Dana Point Harbor Embarcadero was under a long term lease from the County. Bryant, Palmer, Soto, Inc. has highly relevant experience and knowledge of Dana Point Harbor, the Revitalization Plan, and the stakeholder community. Selection of Bryant, Palmer, Soto, Inc. will allow Dana Point Harbor Department to change an important consultant midstream with minimal impact to the schedule and also save the cost of educating a new consultant on a complex project. Due to the short time-frame involved. The Dana Point Harbor Department respectfully requests that your Board approve the sole source contract with Bryant, Palmer, Soto, Inc. This recommended action will enable the project to stay on schedule.

The scope of this agreement is for short-term immediate need of limited architectural, engineering, landscape, signage and other preliminary design work to support the preparation of a Coastal Development Permit application. Dana Point Harbor Department will return to your Board in the future for a subsequent contract with Bryant, Palmer, Soto, Inc. to finalize design development and construction documents. Due to the change in the scope of the Commercial Core project and additional time required by the EIR and planning stages, DPHD expects that additional funds will be requested when we return to your Board for the final design development and construction document service agreement.

CONTRACT NEED AND FUNDING
Funding for this Agreement is provided 100% from the Dana Point Tidelands Fund (Fund 108). Services provided by this Agreement fill a critical services need for the Board approved Dana Point Harbor Revitalization Plan.

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:

REVIEWING AGENCIES:

County Counsel; RDMD/Planning

EXHIBIT(S):

ATTACHMENT(S):

A. Agreement D06-045 (for approval as to form)
B. Sole Source Form

S31B
Backup

SOLE SOURCE REQUEST JUSTIFICATION

Date: July 5, 2006 **Department/Agency:** Dana Point Harbor Department (DPHD)

	George Caravalho	(949) 923-3798
RX Number	**Agency/Department Contact**	**Phone**

Recommended Vendor: Bryant, Palmer, Soto, Inc. (BPS)

Description of Services/Items Supply:
Architectural and Engineering (A-E) services to refine the Dana Point Harbor (DPH) Revitalization Plan's schematic drawing; support the preparation of a Coastal Development Permit for submittal to the California Coastal Commission.

Please state the reason that the product/service can be provided only by the recommended vendor. Include any back-up information or documentation which supports your recommendation. Use additional sheets if necessary.
AC Martin Partners, Inc., the current Architect-Engineer firm retained for the Dana Point Harbor Revitalization project has asked to be released from their A-E Services agreement (letter dated 6-29-06). DPHD is in critical need for A-E services at this time to maintain project schedules. DPHD has just filed the Local Coastal Program amendment with the City of Dana Point in June, 2006. DPHD must rapidly retain A-E consulting services so that we may refine architectural and other design work in support of Coastal Development Permit application to the California Coastal Commission later this year (a long lead-time task).

Bryant, Palmer, Soto, Inc. (BPS) is recommended for sole source selection. BPS is well qualified, experienced and already possesses detail knowledge of Dana Point Harbor, the Revitalization Plan, and current consulting team and the harbor and city community.

BPS is currently the retail architecture subconsultant to AC Martin and has been engaged in the project over the last three years. In addition, prior to the County's Revitalization Project, BPS was retained by Vintage Marina (former lessee of the DPH Embarcadero, Wharf & Mariner's Village) to develop concept renovation plans.

BPS experience with Vintage Marina and the AC Martin, and their understanding of our project is highly relevant and will allow DPHD to quickly produce design work and submit a Coastal Development Permit application to the Coastal Commission.

Have other providers of the product or service been contacted? Please provide detailed information. Use additional sheets if necessary.
No other vendors have been contacted. As the retail architecture subconsultant to AC Martin, BPS is completely aware of all aspects of our project and is well situated to take the lead role in moving the revitalization project forward.

How does recommended vendor's prices or fees compare to the general market? Use additional sheets if necessary.

The vendor's billing rates are comparable to AC Martin's billing rates as well as other A-E firms.

If recommended vendor could not provide the product or service, how would the agency accomplish this particular task? Use additional sheets if necessary.
In this case, DPHD would begin a selection process to identify a qualified A-E firm for Board selection. The result would be significant investment of staff time, loss of project production and, investment in educating the new A-E firm on the past works of all related and responsible consultants. Ultimately, a Coastal Development Permit application would not be submitted to the Coastal Commission in 2006 and the Dana Point Harbor Revitalization Project would experience significant delays.

Recommended for Approval by: _____ ***Date:*** 7/10/06
DPHD Deputy Director

Authorized Agency/Department Signature _____ ***Date:*** 7/10/06
DPHD Director

DECENTRALIZED AGENCY PURCHASING AND CONTRACTS

Comments:

Deputy Purchasing Agent Concurrence: _____ Date: _____

Deputy Purchasing Agent Concurrence: _____ Date: _____

COUNTY OF ORANGE
Dana Point Harbor Department

COUNTY/ARCHITECT-ENGINEER SERVICES AGREEMENT

PROJECT: Dana Point Harbor
PROJECT No.: DP28004

THIS AGREEMENT, made and entered into on July 25, 2006 by and between the County of Orange, a political subdivision of State of California, hereinafter referred to as "COUNTY," and Bryant, Palmer, Soto, Inc. hereinafter referred to as "A-E."

The A-E is an Architecture and Engineering firm, the principal members of which are duly registered under the laws of the State of California.

The Director of the Dana Point Harbor Department, or her designee, hereinafter referred to as "DPHD," is the representative of the County.

The term of this AGREEMENT is for one year and may be extended for two additional one (1) year periods at the sole discretion of the DPHD. Extensions shall be in writing and will not increase the maximum allowable compensation of $708,500.00.

IT IS MUTUALLY AGREED between the parties hereto that:

1. **A-E SERVICES - GENERAL** A-E services shall be in accordance with the latest "Architect-Engineer Guide," and any other Guides as issued by DPHD, receipt of which is hereby acknowledged by A-E. A-E services shall also incorporate the specific project scope set forth in the "Scope of Work" attached hereto and made a part hereof and include any design services which are normally or customarily furnished and reasonably necessary for the work. Services of A-E shall be subject to the direction and approval of DPHD. Approval is as to form only and shall not in any way relieve A-E of responsibility for the technical adequacy of the work.

   A-E has been selected to perform the work herein because of the skills and expertise of key individuals employed by this firm. Therefore, A-E agrees to assign the following individuals to perform their duties under the Agreement and for the term of the Agreement.

   It is understood that the Principal A-E, Project Manager, Project Architect, and staff are qualified, experienced staff members satisfactory to the COUNTY who shall, so long as performance continues to be acceptable to the COUNTY, remain in charge of the services for the Project from project start through completion. The personnel named below may be changed upon prior written approval of DPHD, which approval shall not be unreasonably withheld. Additionally, the A-E must furnish the names to DPHD of all lead or key people in its firm who will be associated with this project. If the designated Principal A-E, Project Manager, or any other key/lead person fails to perform satisfactorily, upon written notice from DPHD, the A-E will have fifteen (15) calendar days to remove that person from the project and replace that person with one acceptable to DPHD. Individuals requested to fill vacant key/lead positions and other project-related positions must have prior approval by DPHD. If any of the following individuals is relieved of his/her duties to perform under this

Agreement, or ceases to be in the employ of the A-E, County may terminate this Agreement pursuant to Clause 11.B.

Position	Name
Principal Architect-Engineers	
Bryant, Palmer Soto, Inc.	Keith Palmer
Choate Parking Consultants	J. Richard Choate
Bluewater Design Group	Tim Bazley
Project Managers	
Bryant, Palmer Soto, Inc.	Keith Palmer
Ficcadenti and Waggoner	Mike Waggoner
FBA Engineering	Darrel Peacock
Focus 360	Brent Chase

A. Experience and Capability: A-E represents that he has the experience and capability to efficiently and expeditiously accomplish the work required under this Agreement, in a timely and satisfactory manner, and A-E further represents and warrants that he will continuously furnish the necessary personnel to complete the project on a timely basis as contemplated by this Agreement.

B. Drawings and Specifications: A-E agrees to adhere to professional standards of accuracy and level of care in creation of the drawings and specifications. A-E shall, without additional fee, correct or revise the drawings and specifications if, at any time from project start through completion, DPHD finds that such revisions are necessary to correct errors or deficiencies for which A-E is responsible.

C. Independent Contractor: Nothing in this Agreement shall be construed as creating the relationship of employer/employee or principal/agent between County and A-E or County and any of A-E's employees or agent. A-E is an independent contractor and shall have responsibility for and control over the details and means for performing the work provided that A-E is in compliance with the terms of the Agreement. Anything in the Agreement which may appear to give DPHD the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of COUNTY only in the results of the work.

2. **BASIC SERVICES** A-E basic services shall consist of the following items, as defined in the Architect-Engineer Guide, when indicated as applicable "A" ("NA" indicates not applicable).

A. Compensation shall be on the basis of not to exceed fixed fees as indicated below.

Permit Phase

TASK		Compensation
I	Architectural (building height) update	$ 15,000
II	Schematic drawing update	$ 130,000

III	Construction phase parking plan	$ 3,500
IV	Quantity & cost estimate update	$ 15,000
V	Permit application support	$ 60,000
VI	Public meetings	$ 30,000
	SUBTOTAL	$ 253,500
TOTAL BASIC SERVICES FEE		$ 253,500

Future Phase Services, below, represent the tasks required after completion of Permit Phase above. Performance of this contract in future budget years is contingent upon appropriation of funds in these future years. Specific scope of work and compensation for Future Phase shall be determined prior to initiation of Future Phase and implemented as an amendment to this AGREEMENT. COUNTY reserves its right in its sole and absolute discretion to cancel all or portions of work under subsequent phase pursuant to clause 11 of this AGREEMENT or select another A-E to perform all or some of the work.

FUTURE PHASE TASKS

Design Development

Construction drawings

Construction support

Permit support

Public meeting support

The A-E services and work product for each phase must be approved in writing by DPHD before proceeding with the next phase. Such approval or payment does not constitute final acceptance or approval of all work and documents, by County and, does not waive or modify the A-E's obligation herein.

B. A-E shall provide the following consulting services by the firms as indicated (" A-E" in firm space indicates that service will be provided by the A-E):

Service	Firm
Architectural	A-E
Architect of Record	(C)
Retail Design	A-E
Architect of Record	Keith Palmer (C11096)
Marine/Waterfront Planning and Engineering	Bluewater Design
Engineer of Record	Tim Bazely (C50019)
CEQA/NEPA Consultant	TBD
Civil	TBD
Civil Engineer of Record	TBD

Parking and Traffic Consultant	TBD
Survey	TBD
Landscape	SWA
Signage and Graphics	TBD
Geotechnical	Leighton & Associates
Computer Visualization	Focus 360 (03-67618)
Kitchen Consultant	TBD
Cost Estimating and Scheduling	O'Conner Const. Mgmt
Cost Estimator	Colm J. O'Conner (39009)
Construction Phasing	O'Conner Const. Mgmt

1) "Consultants" means independent contractors, whether individuals or companies, hired directly by A-E to assist in the performance of any and/or all aspects of the architectural design, engineering, and other services for the Project.

2) A-E shall obtain written approval from DPHD for each and every consultant prior to the signing of the agreement with the consultant.

3) The A-E shall require every consultant to be bound by the terms of this Agreement as applicable to his work.

4) Consultants shall not be changed without prior written approval of DPHD.

C. Construction Phase Services. Construction phase services shall be in accordance with the Orange County A-E Guide. A-E shall review all submittals from the Construction Contractor within 10 days, or as otherwise required by the construction contract documents.

D. Construction Cost. Construction cost shall be identified in future phase by task. A-E shall provide shall construction cost estimate in future phase that is not exceeded at the time of bidding. If COUNTY receives competitive bids within six months of the date of final approval of plans and specifications as in compliance with the scope of work and the responsive, responsible low bid is over the construction cost indicated above, A-E shall, at no additional cost to COUNTY, perform such redesign, reestimating, and other services as may, in the opinion of DPHD, be required to produce a facility which meets the program requirements, within the construction cost.

3. A. **SPECIAL SERVICES** A-E shall provide the following special services, when written direction is given by DPHD, and shall not exceed the compensation shown below.

	Special Service	Not to Exceed Compensation
A	Hazardous Material Survey and Monitoring Services	$ 30,000
B	Geotechnical Services-Report Recommendation (Including Plan Review)	$ 25,000
C	Traffic / Parking Study / Consultation / Design	$ 30,000

	Consultation	
D	Off-site Infrastructure Study/Schematic Design	$ 25,000
E	Computer Generated 3-D Modeling/Video	$ 50,000
F	Marina / Drystack Consultation	$ 5,000
G	Dry Stack Alternative Studies	$ 20,000
H	Surveyor Services / Base Maps / Coordination	$ 60,000
I	Other Consultants Services	$ 50,000
J	Revision / Added Scope	$ 50,000
K	Leasing Coordination / Design Consultation	$ 30,000
L	Supplemental Design Services provided by A/E	$ 40,000
	TOTAL	**$ 415,000**

Notwithstanding any other provision in the Agreement, no services made necessary, in whole or in part, by any fault or omission of the A-E to perform his/her duties, responsibilities or obligations under this Agreement shall be compensated as Special Services under this Agreement.

B. **REIMBURSABLE ITEMS** A-E shall provide the following reimbursable items. Reimbursable Items shall be paid on actual costs supported by invoices or other records supplied by the A-E to DPHD.

Reimbursable Items	Not to Exceed Cost
- Reproduction (Above and beyond requirements of Clause 18 and Exhibit A) and Presentation Materials and Graphics	$ 25,000
- Document Approval/Permitting Fees	$ 10,000
- Mileage and travel expenses for COUNTY approved travel outside of Los Angeles, San Diego, and Orange County	$ 5,000
TOTAL	**$ 40,000**

4. **CHANGES IN SCOPE OF SERVICES**

DPHD is authorized by the Board of Supervisors to make by written order, changes to services to be performed in an amount not to exceed $5,000 per change for total original contract amount equal or less than $50,000; or ten (10%) percent of the total original contract amount per change for total contract greater than $50,000, and equal or less than $250,000; or $25,000 plus one (1%) of the total original contract amount in excess of $250,000 but not to exceed $100,000 per change of the contract greater than $250,000. If such changes cause an increase in the cost of doing work or in the time required and are issued as a result of some action or inaction on the part of COUNTY, compensation shall be at hourly rates as indicated in the attached Exhibit B.

Reimbursable Items (Clause 3) and Changes in Services (Clause 4) must be specifically approved by the DPHD in writing before work begins. All changes in scope of work that amend this Agreement may be subject to approval by the Board of Supervisors.

A. COUNTY Initiated: DPHD may, at any time, upon written notice, direct any changes in the

work within the general scope of the Agreement. If DPHD shall determine that a change in the scope of services of the A-E is desirable, a written order called a "Contract Change Order" shall be issued by DPHD which shall set forth the nature of the change. When a Contract Change Order has been issued, A-E shall expeditiously proceed to implement the change set forth therein.

B. A-E Initiated: If A-E believes that a change in the scope of services is necessary and desirable to further the interests of the project under this Agreement, A-E shall make a request, in writing, to DPHD to issue a Contract Change Order. Such requests for a Contract Change Order shall include the proposed change in scope of work, as well as any proposed change in compensation, schedule, construction cost and time, associated with granting such a Contract Change Order. Upon receipt of such request for a Contract Change Order DPHD may reject the request; approve the request; negotiate with A-E regarding the change in the scope of services, cost and/or change in schedule. A written Contract Change Order will be processed by DPHD and the A-E shall expeditiously proceed to implement such change.

5. **PAYMENTS** The cost for the work, including Special Services fees and Reimbursable Items will be billed by A-E to COUNTY monthly in proportion to the work accomplished and to the extent that the Special Services and Reimbursable Items are incurred. A-E expressly waives any rights to payment for any Special Services and Reimbursable Items if A-E fails to invoice for such services within ninety (90) calendar days following incurrence of cost, as applicable. The value of the work shall include, but not be limited to, work product, objective earned value and completed drawings and specifications.

Payments shall be made on or about the 30th day of the month following commencement of work, and each successive month thereafter, provided A-E submits his request for payment prior to the last day of each preceding month.

Drawings and Specifications mean all plans, designs, engineering and architectural drawings, all calculations, Title 24 California Building Code, (energy efficiency, water conservation, accessibility standards, etc.), and specifications produced.

Objective Earned Value means a method for measuring and reporting progress on the completion of a deliverable element of work (drawing, specification, or report) which reflects actual physical completion of the element.

Work Product means all notes, data (including computer tapes or discs or other means of storage in which the data are embodied), designs, drawings, plans, specifications, correspondence, documents, surveys, reports, patents, trade secrets, and other tangible embodiment of any work produced by A-E (or any other entity).

6. **ACCOUNTING RECORDS** A-E shall keep accurate accounting records of time and expenditures, which records will be available for inspection by COUNTY, or by any other appropriate governmental agency, at reasonable times, for a period of four years after final payment under this Agreement. A-E shall maintain records, separate from all Basic Services records, of the efforts associated with Special Services, Reimbursable Items, costs arising from deficiencies in the plans and specifications, and changed work.

A. Right to Offset The COUNTY, without waiver or limitation of any of its rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by the COUNTY to A-E in connection with this Agreement, any and all amounts owed by A-E to the COUNTY in

connection with this Agreement.

B. Cost Control System A-E shall maintain a coded construction cost reporting system subject to the approval of DPHD.

7. **LICENSES AND CERTIFICATES** A-E and its consultants, if any, shall, at all times during the term of this Agreement, maintain in full force and effect such licenses or permits as may be required by the State of California or any other governmental entity. A-E and its consultants, if any, shall strictly adhere to, and obey, all governmental rules and regulations in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.

8. **DELAYS**

A. Excusable If the COUNTY or A-E is delayed in performing any of their respective obligations in the Agreement and such delay is caused by Acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, accidents, acts of civil or military authority, fires, floods, or earthquakes, or similar causes beyond the reasonable control of the party delayed, such delay shall be excused and the period of such delay, or a portion thereof, shall be added to the time for performance of the obligation delayed.

B. Obligations In the event any such delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other in writing of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, whether such delay is excused or not, the party delayed shall exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay and any associated costs.

C. Failure of Performance Failure of performance due to any delay shall not terminate the Agreement or excuse a failure by the party affected to resume performance of its obligations hereunder as promptly as possible upon termination of delay occurrence.

D. Recovery Plan Immediately upon learning of any event that may lead to a delay in the progress of the work, A-E shall prepare a plan for recovery of the original Project Schedule including any associated costs, impacts or related effects the exercise of any such plan may have on the project. Upon receipt of such plan, DPHD may direct A-E to execute any option described, or a combination thereof, or a modification thereof.

9. **ERRORS AND OMISSIONS** In the event of errors or omissions that are due to the negligence or professional inexperience of A-E which result in expense to COUNTY greater than would have resulted if there were not errors or omissions in the work accomplished by A-E, the additional design, construction and/or restoration expense shall be borne by A-E including construction delay claims, COUNTY administration costs and Contractor overhead costs.

10. **INSURANCE AND INDEMNITY**

Prior to the provision of services under this contract or payment therefore, the A-E agrees to purchase all required insurance at A-E's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this agreement have been complied with and to keep such insurance

coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this contract. In addition, all subcontractors performing work on behalf of A-E pursuant to this agreement shall obtain insurance subject to the same terms and conditions as set forth herein for A-E. A-E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by the COUNTY from the A-E under this agreement. It is the obligation of the A-E to provide notice of the insurance requirements to every subcontractor, and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A-E through the entirety of the project for inspection by COUNTY representative at any reasonable time.

All insurance policies required by this agreement shall declare any deductible or self-insured retention (SIR). The maximum deductible or SIR amount shall be $25,000 for general liability and $5,000 for automobile liability. The A-E shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If the A-E fails to maintain insurance acceptable to the COUNTY for the full term of this contract, the COUNTY may terminate this agreement.

Qualified Insurer

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

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

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

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

Coverage	Minimum Limits
Commercial General Liability including broad form property damage and contractual liability	$1,000,000 combined single limit per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicle	$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$1,000,000 per claims made or per occurrence

All liability insurance, except Professional Liability, required by this agreement shall be at least $1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be $2,000,000

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 by this agreement 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 contractor'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. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

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

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

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

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

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

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

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

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

Indemnities A-E agrees that it will defend and indemnify, release and save harmless, the COUNTY, its elected and appointed officers, employees, agents, tenants, licensees and invitees, from and against any and all liability, loss, damages, claims, costs or expenses, including attorneys' fees, which the COUNTY may sustain, incur, or become liable for, including loss of, or damage to, any property or death of any person resulting from the negligent performance of services by A-E, its officers, agents, employees, subcontractors, consultants, licensees or invitees under the Agreement.

11. TERMINATION OF AGREEMENT

A. Termination for Default

1) Notice If A-E defaults in the performance of any material obligation under this Agreement and fails to correct such default (or if immediate correction is not possible, fails to undertake effective action and diligently continue to correct such default) within ten (10) working days following receipt of written notice thereof from the COUNTY, the COUNTY may, without prejudice to any other rights or remedies it may have, cause further payment to be held in abeyance and/or terminate this Agreement by written notice to A-E specifying the date of termination. In the event of such termination by the COUNTY, the COUNTY may take possession of the work at the project site and A-E's place of business, and any or all materials, drawings, records, supporting documentation, calculations and equipment which

the COUNTY has paid for (whether delivered to the project site or on order therefore by A-E).

2) Obligations In the event of termination for default, A-E shall turn over all work product, including all reports and data generated, or in progress, relative to this Agreement and immediately advise the COUNTY of all outstanding contracts, subcontracts, rental agreements and purchase orders which A-E has with others pertaining to performance of the work and furnish COUNTY with complete original copies thereof. Upon request by COUNTY, A-E shall assign the COUNTY, in form and content satisfactory to COUNTY, A-E's title to materials and equipment for the work and those contracts, subcontracts, rental agreements and purchase orders designated by COUNTY.

3) Compensation In the event of termination by COUNTY for default, A-E shall not be

entitled to receive any further payment until the work is completed. If the sum of the total cost to COUNTY of completing the work plus amounts previously paid to A-E for the work exceeds the total compensation specified in this Agreement for the completed work, A-E shall promptly pay the difference to COUNTY. COUNTY shall have the right and is authorized to set off against and deduct from any amounts payable to A-E any other damages suffered by the COUNTY due to said default or event giving rise to the termination or due to other defaults of A-E in complying with the terms of the Agreement. A-E shall continue to be fully liable for all such damages to COUNTY. A waiver by COUNTY of one default by A-E shall not be considered to be a waiver of any other default by A-E, nor be deemed to amend or modify the terms of the Agreement. Nothing in this paragraph shall be deemed to be a waiver of any remedy in law or in equity, which COUNTY may have.

B. Termination for Convenience of the COUNTY

1) The performance of work under this Agreement may be terminated by COUNTY in accordance with this Clause in whole, or from time to time in part, whenever the Board of Supervisors shall determine that such termination is in the best interest of COUNTY. Any such termination shall be effected by delivery to A-E of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

2) After receipt of a Notice of Termination, and except as otherwise directed by the Board of Supervisors, A-E shall:

(a) Stop work under the Agreement on the date and to the extent specified in the Notice of Termination;

(b) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;

(c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(d) assign to COUNTY all of the right, title, and interests of the A-E under the orders and subcontracts so terminated, in which case COUNTY shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, subject to the approval of the Board of Supervisors;

(f) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(g) take such action as may be necessary for the protection and preservation of the property related to this Agreement which is in the possession of A-E and in which COUNTY has, or may acquire, an interest.

14. **CONFIDENTIALITY**

A. Assurances A-E shall assure COUNTY that its subcontractors, consultants and vendors shall hold confidential all portions of the Work except as expressly authorized for release by COUNTY in writing. That portion of the Work originating from consultants, suppliers, vendors, subcontractors or contractors shall not be released at any time or under any circumstances, without the written permission of COUNTY.

B. Non-Disclosure A-E shall not disclose any of the Work Product to third parties except as may be necessary to perform the Services required hereunder and, in any event, A-E shall take all reasonable measures to protect the propriety, secrecy and confidentiality of the Work Product. A-E is authorized to make such Work Product disclosures on a "need to know" basis as may be necessary for the performance of work by its Subcontractors and Consultants. A-E shall assure COUNTY that all contractor and consultant contracts issued or prepared by A-E or prepared by the COUNTY with A-E's assistance shall contain this confidentiality requirement.

C. Non-Utilization A-E understands and agrees that it is the COUNTY that is so entitled to be safeguarded and protected by the confidentiality of the Work Product, which it has commissioned under the contract. A-E unqualifiedly agrees, warrants and represents that it will not utilize or disclose any aspect of the Work Product as defined herein to others for any purpose, except as contemplated herein.

15. **WAIVER** The waiver of any duties required hereunder, or the waiver of any breach of any provision of this agreement, shall not constitute a continuing waiver or waiver of any subsequent duty, or breach, either of the same, or any other provision, of this agreement.

16. **OWNERSHIP OF DOCUMENTS** All original drawings, designs, specifications, Computer Aided Drafting and Design disks or tapes, and other incidental architectural and engineering work or materials furnished hereunder shall be and remain the property of COUNTY, and may be used by COUNTY as it may require, without any additional cost to COUNTY. In the event of reuse of such documents, COUNTY shall indemnify and hold harmless the A-E, its employees and consultants, from any and all claims, damages, losses, and expenses, including but not limited to attorney's fees, resulting from such reuse.

17. **PROGRESS REPORT AND SCHEDULE** A-E shall submit a Progress Report every two weeks.

18. **REPRODUCTION OF DOCUMENTS** A-E shall provide applicable printing and reproduction at a minimum as specified below. Some items may apply to future phases.

A.	Draft Documents:	3 sets
B.	Final Documents	5 sets

19. **ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

A-E agrees to furnish to the COUNTY the execution of Form "A" or Form "B" whichever is applicable within thirty days of the execution of this contract:

(a) in the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address; (Form "A")

(b) in the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent or more in CONTRACTING entity. (Form "B")

(c) a certification that the CONTRACTOR has fully complied with all applicable federal and State reporting requirements regarding its employees;

(d) a certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

The failure of the CONTRACTOR to timely submit the data or Certifications required by Subsections (a), (b), (c), or (d), or to comply with all federal and State employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract, and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, and for no other purpose.

DPHD, with the concurrence of the Orange County Child Support Services Agency, may waive the requirements of this provision, or any part thereof, with regard to particular contracts or classes of contracts. DPHD shall forthwith transmit data received from A-E under the provisions of this Agreement to the Orange County Child Support Services Agency, and shall not use or disclose the data for any other purpose.

20. **Governing Law and Venue**

This agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. The parties specifically agree that by soliciting and entering into and performing services under this agreement, the A-E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this agreement is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this agreement, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the date first above written which is the effective date.

DATED: _____

COUNTY OF ORANGE

By _____
Chairman of its Board of Supervisors
"COUNTY"

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

_____
DARLENE J. BLOOM
Clerk of the Board of Supervisors
of Orange County, California

Bryant, Palmer, Soto, Inc.

By _____
Keith Palmer
President

By: _____
Wallace C. Hutton
CFO

APPROVED AS TO FORM:
Benjamin P. de Mayo
County Counsel

By _____
Deputy

Date _____

Footnote: Pursuant to the requirements of California Corporations Code section 313,
One of the following two methods must be used by a corporation when it enters into a contract with the County:
1) The document must be signed by two people. One of them must be the chairman of the board, the president or any vice president. The other must be the secretary, any assistant secretary, the chief financial officer or any assistant treasurer.
2) One corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.

Dana Point Harbor Revitalization
Dana Point, California
July 7, 2006
Project No. DP28004
Agreement D06-045 (Bryant, Palmer, Soto, Inc.)

Scope of Work Exhibit A

BASIC SERVICES include tasks I thru VII as described below to provide A/E services during the Coastal Development Permit (CDP) process for the proposed Dana Point Harbor Revitalization Project (Commercial and Marine Service Area) as defined in the Schematic Design Package dated May 4, 2004. Updates, revisions and supplemental services are necessary for CDP processing as listed in the DPHD Request for Proposal (RFP) dated May 31, 2006 and the BPS proposal dated June 7, 2006.

I.) Architectural (Building Height) Update.

1.) Based on the outcome of City hearings, modification to the architectural plans may be required to lower heights of certain buildings. (RFP Item #11)
   a. Exterior elevations will be revised to lower the pitch of the roofs and modify architectural features. Scope of work includes design studies to explore options and revisions to schematic design documents.
   b. If any 3D imagery is required, it will be done as Special Services and not be included in Basic Services.
   c. If any redesign of buildings is required it will be done as Special Services.

II) Schematic Design Update

1.) Increase the level of detail shown for the architecture of the buildings (RFP Item #1)
   a. Color and material selections will be proposed for review and approval.
   b. Color elevations and material boards will be prepared.
   c. Color and material legends will be added to exterior elevations.
   d. Typical architectural elements will be drawn at a larger scale and typical details will be included to further explain the proposed architectural character for new buildings and the proposed restoration of the existing wharf buildings.

2.) Include a building height comparison. (RFP item #2)
   a. Add vertical height references (with common vertical datum) at proposed buildings and add comparative references to existing buildings, street elevations and bulkhead.

3.) Add dimensions to the plans (RFP item #3)
   a. Add key dimensions to the plans to clarify design intent and establish critical horizontal and vertical control dimensions.

4.) Update the old parking layout in the marine services area with the most recent design.
   a. The CAD files the marine services architectural layout will be merged into the overall site plan. (RFP item #4)

5.) Identify parking spaces devoted to specific users, such as boaters. (RFP item #6)
   a. The overall site plan will indicate any special parking areas designated for specific uses to clarify design intent.
   b. Parking summaries will be subdivided for easy reference to clarify design intent and conformance with codes and design criteria.

6.) Provide additional information regarding lighting and signage. (RFP item #7)
   a. Add information to clarify design intent for key lighting elements including preliminary fixture selections with recommended lamp types and wattages.
      Parking Lot Lighting
      Pedestrian Lighting
      Architectural Lighting
   b. Add information to indicate design intent for tenant signage on building elevations.
   c. If detailed lighting and signage guidelines / criteria are required they will be one as special Services and not be part of the Basic Services.

7.) In addition to refining the landscape sheets in the schematic set, provide a written description of the landscape theme or style. Certain tree species will need to change due to view shed concerns of nearby residents. (RFI item #8)
   a. A written description of the landscape theme will be provided. Photographic exhibits or sketches will be provided for reference.
   b. Schematic Plans will be modified to change tree specifications in critical viewshed areas.
   c. The legends on the landscape plans will be reviewed and edited to clarify design intent.
   d. Any reassessment or redesign of landscape /hardscape elements if required will be done as Special Services and not be a part or Basic Services.

8.) Address the written comments on the schematic plans previously submitted. (RFP item #9)
   a. Each comment from the Jon Conk review dated July 6, 2006will be assessed and reviewed with the project manager to establish appropriate action items.
   b. Research and analysis will be done when applicable.
   c. Alternatives will be proposed when appropriate
   d. Schematic design plans will be updated and revised to address comments.

9.) Prepare a calculation of grading quantities. (RFP item #10)
   a. Engineer's earthwork estimates will be based on the existing schematic grading plan and available soils report recommendations. Quantities will be broken down to include over excavation, import, export and net change.
   b. If alternative grading concepts, revisions and calculations are required they will be done as special Services and not included in the Basic Services.

10.) Meetings, Administration, Coordination, CADD Transition.
   a. In addition to the time required to complete each of the items listed above additional time will be required for.
      1 Meetings (40 hours allowance)
      2 Administration (40 hours allowance)
      3 Coordination (40 hours allowance)

4 Cadd Transition. (40 hours allowance)

b. If existing cadd files require specialized expertise or major modifications it will be done as special Services and not included as Basic Services.

III. Construction Phase Parking Plan

1.) Include information related to temporary parking during construction. (RFP item #5)

a. Prepare a plan exhibit based on a phased temporary parking scheme prepared by others.

b. If the A/E team is asked to develop temporary parking schemes, alternatives or revisions they will be done as Special Services and not be a part of Basic Services.

IV. Quantity & Cost Estimate update (2 updates C.D.P. submittal and prior to Design Development

1.) a. Based on the updated plans (Task I & II above) an update to the quantity and cost Estimate (previously prepared for Schematic Design) will be prepared.

b. A second update will be prepared to account for revisions resulting from the Coastal Development Permit process.

V. Permit Application Support

1.) a. Provide exhibits, alternative studies, revisions, coordination and attend project meetings during the Local Coastal Plan Amendment (LCPA) and the Coastal Development Permit (CDP) process on an as needed basis. Support is expected to be required in preparation for up to six reviews as described below.

1. L.C.P.A. Planning commission
2. L.C.P.A. City Council
3. L.C.P.A. Coastal Commission
4. C.D.P. Planning Commission
5. C.D.P. City Council
6. C.D.P. Coastal commission (if req'd)

b. If the support exceeds the allowance in Basic Services, additional support can be provided as Special Services.

VI. Public Meetings.

1.) a. Provide public meeting attendance to provide technical expertise and /or assist in presentation as required during the Local Coastal Plan Amendment and Coastal Development Permit process. Attendance is expected to be necessary for up to eight public meetings as described below.

1. L.C.P.A. City Council #1 (up to 3 principals/up to 6 hrs.)
2. L.C.P.A. City Council #2 (up to 3 principals/up to 6 hrs.)
3. L.C.P.A. Coastal Commission (up to 3 principals/up to 8 hrs)
4. Community Meeting (up to 3 principals/up to 4.5 hrs.)
5. C.D.P. Planning Commission #1(up to 3 principals/up to 6 hrs.)
6. C.D.P. Planning Commission #2(up to 3 principals/up to 6 hrs.)
7. C.D.P. City Council (up to 3 principals/up to 6 hrs.)
8. C.D.P. Coastal Commission (up to 3 principals/up to 8 hrs.)

Future Services include Future tasks FI thru FV as described below to provide continuation of A/E services to follow the Coastal Development Permit process

F-I **Design Development**
1.) Detailed scope TBD

F-II **Construction Drawings**
1.) Detailed scope TBD

F-III **Construction support**
1.) Detailed scope TBD

F-IV **Permit Support**
1.) Detailed scope TBD

F-V **Public Meeting Support**
1.) Detailed scope TBD

Special Services; **see Article 3A**

Reimbursable Items; **see Article 3B**

EXHIBIT B - HOURLY RATES

Bryant, Palmer Soto, Inc
Agreement D06-045

BPS and consultants time and materials compensation for services is based upon the following schedule of fees and charges which will remain constant for a period of 24 months from the date of this agreement. Subsequent rate adjustments may not exceed 6% for each 24 month period without written approval from DPHD. The first hourly rate revision will take place July 1, 2008.

Hourly Rates for Professional and Support Staff	Rate/Hour
Prinicipals	$195.00
Managers	$165.00
Planner/Designer	$150.00
Architect/Engineer	$150.00
Job Captain	$120.00
Technical/Sr. Drafter	$ 95.00
Drafter	$ 85.00
Administration	$ 65.00
Support	$ 55.00