

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified. No new supplemental items will be added to the agenda following close of business on Friday immediately prior to a Board meeting.*

October 18, 2022

CONSENT

- Continued to 11/8/22, 9:30 a.m.

DISCUSSION

- Revised Title to read:
Sheriff-Coroner - Approve amendment 1 to renew contract MA-060-22010241 with Computer Deductions Inc. for software development, maintenance and support, 12/1/22 - 11/30/24 (\$6,809,088; *cumulative total \$10,213,632*); renewable for two additional one-year terms; and authorize County Procurement Officer or Deputized designee to execute amendment - All Districts
- Revised Title to read:
Sheriff-Coroner - Approve amendment 1 to renew contract MA-060-21010542 with Computer Deductions, Inc. for extended maintenance and support services of Dorado Mainframe hardware and software operating systems, 12/1/22 - 11/30/23 (\$736,024; *cumulative total \$2,208,072*); and authorize County Procurement Officer or Deputized designee to execute amendment - All Districts
- Continued to 11/8/22, 9:30 a.m.
- County Executive Office** - Approve grant applications/awards submitted by *Sheriff-Coroner, OC Public Works, Social Services Agency, OC Community Resources and John Wayne Airport, retroactive grant applications/awards submitted by OC Community Resources, and ratify grant application/awards submitted by Sheriff-Coroner* in 10/18/22 grant report and other actions as recommended; *adopt resolution authorizing Sheriff-Coroner or designee to accept \$101,500 grant funding and execute related documents from California Department of Parks and Recreation Division of Boating and waterways for boating safety and enforcement equipment; adopt resolution approving submittal of application to Orange County Transportation Authority for Cow Camp Road Segment 2C-2A Project funding under Comprehensive Transportation Program; adopt resolutions authorizing Social Services Agency Director or designee to apply, accept, execute application, amendments and deliver any related documents for Transitional Housing Program Round 2 (\$208,000), Round 3 (\$208,000) and Housing Navigators Program (\$221, 210) from California Department of Housing and Community Development; adopt resolutions approving standard agreement CF-2223-22 for Supplemental Nutrition Assistance Program Education for CalFresh Healthy Living and CalFresh Expansion, 10/1/22 9/30/25 (\$1,027,806) and standard agreement NI-2223-22 for Senior Nutrition Infrastructure Program, 10/1/22 - 12/31/24 (\$2,129,467) with California Department of Aging; and authorize OCCR Director or designee to execute agreements and future amendments under certain conditions* - All Districts

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 19, 21 and 41

REVISIONS AND SUPPLEMENTALS TO OCTOBER 18, 2022 AGENDA - PAGE 1 OF 3

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

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S u p p l e m e n t a l I t e m (s)

- S42A. **Supervisor Bartlett** - Approve addition of annual Extraordinary Lives Foundation Gala and other mental health & wellness events to County Events Calendar; and make related findings per Government Code Section 26227
- S42B. **Vice Chairman Wagner** - Assessment Appeals Board No. 2 - Reappoint Hardip Passananti, Irvine, for term ending 8/31/25
- S42C. **Vice Chairman Wagner** - Direct County Counsel to request Orange County Superior Court to open the conservatorship proceedings for defendant Aminadab Gaxiola Gonzalez (Orange County Superior Court Case 21CF0924) to the public and victims in the March 31, 2021 mass shooting in City of Orange
- S42D. Deleted
County Executive Office - Approve contract MA-017-23010366 with The Salvation Army for cold weather emergency shelter services, 10/18/22 - 3/31/23 (\$900,000); and authorize County Procurement Officer or Deputized designee to execute contract - District 2
- S42E. **Sheriff-Coroner** - Approve job order contracts with various contractors for general building services (\$5,000,000 each; aggregate total \$45,000,000), electrical services (\$5,000,000 each; aggregate total \$15,000,000), mechanical services (\$5,000,000 each; aggregate total \$10,000,000), and roofing services (\$5,000,000 each; aggregate total \$10,000,000); one-year terms; authorize Director of Research and Development or designee to execute contracts under certain conditions; and authorize return of bid guarantees to all bidders upon execution of contracts - All Districts
- S42F. **OC Community Resources** - Adopt resolution approving addition of co-applicant CM Mercy House CHDO LLC for participation in HomeKey Program; approving submission of application to Department of Housing and Community Development (\$11,000,000); and authorizing Director or designee to execute application and related documents; authorize Director or designee to utilize up to \$2,000,000 in Mental Health Services Act funds and \$2,500,000 for partial development costs for with Motel 6, Costa Mesa; approve loan commitments to CM Mercy House CHDO LLC; approve subordination at acquisition, construction and permanent financing to first trust deed loan (\$7,900,000); authorize Director or designee to subordinate additional senior debt and execute related documents under certain conditions; approve Ground Lease with CM Mercy House CHDO LLC and Lease Rider with California Tax Credit Allocation Committee; and authorize Chief Real Estate Officer or designee to execute Ground Lease, Lease Rider and amendments under certain conditions - District 5
- S42G. **Chairman Chaffee** - Adopt resolution supporting Operation Green Light for Veterans which encourages the illumination of green bulbs from November 7th - 13th

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

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- S42H. **OC Community Resources** - Approve increase of 2020 Supportive Housing Notice of Funding Availability (\$1,000,000) and authorize Director or designee to utilize funds for additional loan financing to Jamboree Housing Corporation or JHC-Beach2 LLC for partial development costs of Riviera Motel, Stanton; approve additional construction loan commitment (\$1,000,000); approve subordination at construction financing to first trust deed construction loan (\$2,850,000) and subordination at permanent loan financing of all County loans (cumulative total \$3,032,983); and authorize Director or designee to subordinate additional senior debt and execute related agreements and documents under certain conditions - District 4
- S42I. **Vice Chairman Wagner** - Approve appropriation of \$15,000 from Third District's discretionary funds to Best Buddies Orange County for Pre-Employment Transition services vocational training program and transportation needs for participants to get to and from interviews and jobs; and make related findings per Government Code Section 26227
- SCS2. **County Executive Office** - CONFERENCE WITH REAL PROPERTY NEGOTIATOR - Pursuant to Government Code Section 54956.8:
Property Location: 1725 West 17th Street, Santa Ana, California
County Negotiator: Thomas A. Miller, Chief Real Estate Officer
Negotiating Party: 17th Street Partners, LLC
Under Negotiation: Terms and Value of Future Lease
- SCS3. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING AND ANTICIPATED LITIGATION - Pursuant to Government Code Section 54956.9, (d)(1) and (d)(2):
Number of Cases: Two, including William Buck Johns, et al., v. County of Orange, Orange County Superior Court Case No. 30-2022-01281155
- SCS4. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – INITIATION OF LITIGATION - Pursuant to Government Code Section 54956.9(d)(4):
Number of Cases: One Case



Continuation or Deletion Request

Date: October 13, 2022
To: Clerk of the Board of Supervisors
From: Charlene Reynolds, Airport Director, John Wayne Airport *CR*
Re: ASR Control #: 22-000875, Meeting Date 10/18/22 Agenda Item No. # 2
Subject: John Wayne Airport Capacity Allocations for 2023 Plan Year

Request to continue Agenda Item No. # 2 to the 11/08/22 Board Meeting.

Comments: To allow the department time to analyze data on air carrier Remain Overnight allocation usages and appropriate allocations within safe and efficient airport operations.

Request deletion of Agenda Item No. # _____

Comments:



Revision to ASR and/or Attachments

Date: October 4, 2022
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Executive Director Brian Wayt, Sheriff-Coroner Department
Re: ASR Control #: 22-000711, Meeting Date 10/18/22, Item No. # 19
Subject: Approve Amendment Number One to Computer Deductions Inc., Contract

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com
c=US
Date: 2022.10.05 10:03:00
-0700

2022 OCT -5 AM 10:18

RECEIVED

Explanation:

Added cumulative not to exceed amount to the Recommended Action.

Revised Recommended Action(s)

Authorize the County Procurement Officer or Deputized designee to renew the sole source contract with Computer Deductions Inc. for software development, maintenance and support, for the term of December 1, 2022, through November 30, 2024, in a contract amount not to exceed \$6,809,088, for a cumulative not to exceed amount of \$10,213,632, renewable for two additional one-year terms.

Make modifications to the:

Subject Background Information Summary Financial Impact

Revised Attachments (attach revised attachment(s) and redlined copy(s))



Revision to ASR and/or Attachments

Date: October 4, 2022
To: Clerk of the Board of Supervisors
CC: County Executive Office *BW* *Frank*
From: Executive Director Brian Wayt, Sheriff-Coroner Department
Re: ASR Control #: 22-000844, Meeting Date 10/18/22, Item No. # 21
Subject: Renew Dorado Mainframe Hardware and Software Maintenance and Support Services

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of Orange, ou=CEO,
email=frank.kim@ocgov.com, c=US
Date: 2022.10.05 10:11:13 -0700

2022 OCT -5 AM 10:19
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF ORANGE
RECEIVED

Explanation:

Added cumulative not to exceed amount to the Recommended Action.

Revised Recommended Action(s)

Authorize the County Procurement Officer or Deputized designee to renew the contract with Computer Deductions, Inc., for the extended maintenance and support services of the Dorado Mainframe hardware and software operating system extended maintenance and support services, for the term of December 1, 2022, through November 30, 2023, in the not to exceed amount of \$736,024, for a cumulative amount of \$2,208,072.

Make modifications to the:

Subject Background Information Summary Financial Impact

Revised Attachments (attach revised attachment(s) and redlined copy(s))



Continuation or Deletion Request

Date: October 5, 2022
To: Clerk of the Board of Supervisors
From: *J.T.* James Treadaway, OC Public Works Director *L. Orma*
Re: ASR Control #: 22-000730, Meeting Date 10/18/22 Agenda Item No. # 30
Subject: Approve Agreement and Award Design Contract for Los Patrones
Parkway Extension

Request to continue Agenda Item No. # 30 to the 11/8/22 Board Meeting.

Comments:

Request deletion of Agenda Item No. # _____

Comments:



AGENDA STAFF REPORT

Agenda Item

41

ASR Control 22-000826

MEETING DATE: 10/18/22
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Peter DeMarco (714) 834-5777
 Julie Bechtol (714) 834-2009

SUBJECT: Grant Applications/Awards Report

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Resolution to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A **County Audit in last 3 years:** No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve grant applications/awards as proposed and other actions as recommended.

1.	Approve Ratified Grant Application – Sheriff Coroner – Operation Stonegarden Grant Program – \$842,000
2.	Approve Grant Award and Adopt Resolution – Sheriff Coroner – Boating Safety and Enforcement Equipment (BSEE) Grant Program – \$101,500
3.	Approve Grant Award – Sheriff Coroner – FY 2022 Body Worn Camera Policy and Implementation Program – \$400,000
4.	Approve Grant Award – Sheriff Coroner – Capacity Enhancement and Backlog Reduction Program – \$470,810
5.	Approve Grant Award – Sheriff Coroner – 2022 Edward Byrne Memorial Justice Assistance Grant (JAG) – \$464,954
6.	Approve Grant Application and Adopt Resolution – OC Public Works – Cow Camp Road Segment 2C – 2A – \$8,944,150

7.	Approve Grant Award – OC Public Works – Orange County Floodplain Management Plan Project – \$975,000
8.	Approve Grant Application – Social Services Agency – Housing and Disability Advocacy Program – \$7,659,238
9.	Approve Grant Resolution – Social Services Agency – Transitional Housing Program (THP) Round 2
10.	Approve Grant Resolution – Social Services Agency – Transitional Housing Program (THP) Round 3
11.	Approve Grant Resolution – Social Services Agency – Housing Navigators Program (HNP) Round 2
12.	Approve Retroactive Grant Application – OC Community Resources – CALFORALLANIMALS – \$426,282
13.	Approve Retroactive Grant Award and Adopt Resolution – OC Community Resources – SNAP Ed/CalFresh Healthy Living and CalFresh Expansion – \$1,027,806
14.	Approve Grant Award and Adopt Resolution – OC Community Resources – Senior Nutrition Infrastructure – \$2,129,467
15.	Approve Grant Disbursement – OC Community Resources – Comprehensive and Accessible Reemployment through Equitable Employment Recovery (CAREER) National Dislocated Worker Grant – \$3,000,000
16.	Approve Grant Application – John Wayne Airport – Bipartisan Infrastructure Law (BIL) Airport Terminal Program (ATP) Terminal Elevator and Escalator Replacement – \$12,000,000
17.	Approve Grant Application – John Wayne Airport – Bipartisan Infrastructure Law (BIL) Airport Terminal Program (ATP) Restrooms and Path of Travel – \$17,000,000
18.	Receive and File Grants Report.

SUMMARY:

See the attached Grants Report.

BACKGROUND INFORMATION:

See the attached Grants Report.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Grants Report

Attachment B - OCSB Boating Safety Resolution

Attachment B - OCPW Cow Camp Resolution

Attachment B - SSA Transitional Housing Round 2 Resolution

Attachment B - SSA Transitional Housing Round 3 Resolution

Attachment B - SSA Housing Navigation Resolution

Attachment B - OCCR SNAP/CalFresh Resolution

Attachment B - OCCR Senior Nutrition Resolution



Grants Report

DRAFT

County Executive Office/Legislative Affairs

October 18, 2022
Item No: 41

County of Orange Report on Grant Applications/Awards

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants \$50,000 or less is delegated to the County Executive Officer. Grant awards greater than \$50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On October 18, 2022, the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS:

1. Approve Ratified Grant Application – Sheriff Coroner – Operation Stonegarden Grant Program – \$842,000
2. Approve Grant Award and Adopt Resolution – Sheriff Coroner – Boating Safety and Enforcement Equipment (BSEE) Grant Program – \$101,500
3. Approve Grant Award – Sheriff Coroner – FY 2022 Body Worn Camera Policy and Implementation Program – \$400,000
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17. Approve Grant Application – John Wayne Airport – Bipartisan Infrastructure Law (BIL) Airport Terminal Program (ATP) Restrooms and Path of Travel – \$17,000,000
18. Receive and File Grants Report.

If you or your staff have any questions or require additional information on any of the items in this report, please contact Julie Bechtol at 714-834-2009.

ORANGE COUNTY SHERIFF'S DEPARTMENT

EXTERNAL MEMO

To: Frank Kim, County Executive Officer
From: Don Barnes, Sheriff-Coroner *J.W. Barnes for D.B. Ford*
Date: October 4, 2022
RE: Ratify Request to Apply for the Operation Stonegarden Grant Program

Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US
 Date: 2022.10.05 10:22:06 -0700



The Sheriff-Coroner Department requests that the County Executive Officer place the subject grant application on the October 18, 2022, Board of Supervisors Meeting Agenda. The Sheriff requests ratified approval to apply for \$842,000 from the County of San Diego Sheriff's Department through the State of California Governor's Office of Emergency Services (CalOES) and the U.S. Department of Homeland Security for the Operation Stonegarden Grant Program (OPSG). The grant offer, made on September 7, 2022, required the Sheriff submit an application for the grant before September 19, 2022.

The grant application was submitted in time on September 19, 2022. Unfortunately, as a sub-recipient, the Department did not have enough time to schedule this application for Board approval with such a short period of time.

The grant funding is intended to enhance cooperation and coordination between Federal, State and local law enforcement agencies in a joint mission to secure the United States' borders along routes of ingress from international borders, including travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. OSPG grant funding supports these States in the following areas:

- Increasing capability to prevent, protect against, and respond to border security issues
- Encouraging local operational objectives and capabilities to enhance National and State Homeland Security Strategies
- Increasing coordination and collaboration among Federal, State, local and tribal law enforcement agencies
- Continuing the distinct capability enhancements required for border security and border protection
- Providing intelligence-based operations through Customs and Border Protection/Border Patrol (CBP/BP) Sector Level experts to ensure safety and operational oversight of Federal, State, local and tribal law enforcement agencies participating in OPSG operational activities
- Continuing to increase operational, material and technological readiness of State, local and tribal law enforcement agencies

The Sheriff-Coroner Department plans to return to the Board of Supervisors for acceptance if we are granted the allocation. The allocation will be used towards overtime and benefits and procuring one (1) fully outfitted 38 foot Defiant Boat to replace the boat which was funded by 2009 Operation Stonegarden grant by our Harbor Patrol Bureau. The Sheriff-Coroner Department will serve as the County fiscal agent, and the Sheriff's grant management personnel will provide oversight for the grant and submission of related documents.

If you have any questions about the grant, please contact Yumi Leung, Grant Manager at (714) 834-6674.

c: Executive Director Brian Wayt, Administrative Services Command
 Director Noma Crook, Financial Administration Division
 Asst. Director Lynn Wilkerson, Financial Administration Division



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 4, 2022																								
Requesting Agency/Department:	Sheriff-Coroner Department																								
Grant Name and Project Title:	Operation Stonegarden Grant Program Funds (Catalog of Federal Domestic Assistance [CFDA] number 97.067)																								
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	County of San Diego through California Governor's Office of Emergency Services (CalOES) through U.S. Department of Homeland Security																								
Application Amount Requested:	\$842,000																								
Application Due Date:	9/19/2022																								
Board Date when Board Approved this Application:																									
Awarded Funding Amount:																									
Notification Date of Funding Award:																									
Is this an Authorized Retroactive Grant Application/Award? Yes <small>(If yes, attach memo to CEO)</small>																									
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:																								
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	<table border="1"> <thead> <tr> <th>Grant Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr><td>2012</td><td>\$540,665</td></tr> <tr><td>2013</td><td>\$283,567</td></tr> <tr><td>2014</td><td>\$200,000</td></tr> <tr><td>2015</td><td>\$200,000</td></tr> <tr><td>2016</td><td>\$250,086</td></tr> <tr><td>2017</td><td>\$150,000</td></tr> <tr><td>2018</td><td>\$170,000</td></tr> <tr><td>2019</td><td>\$245,284</td></tr> <tr><td>2020</td><td>\$353,597</td></tr> <tr><td>2021</td><td>\$283,000*</td></tr> <tr><td>2022</td><td>\$842,000*</td></tr> </tbody> </table> <p>*Award Pending</p>	Grant Year	Amount	2012	\$540,665	2013	\$283,567	2014	\$200,000	2015	\$200,000	2016	\$250,086	2017	\$150,000	2018	\$170,000	2019	\$245,284	2020	\$353,597	2021	\$283,000*	2022	\$842,000*
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2018	\$170,000																								
2019	\$245,284																								
2020	\$353,597																								
2021	\$283,000*																								
2022	\$842,000*																								
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																								
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Offered by federal government to previous recipients																								
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>																								
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A																								
Will the grant/program create new part or full-time positions?	N/A																								
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.																								



**CEO-Legislative Affairs Office
Grant Authorization eForm**

The U.S. Department of Homeland Security provides funding through the Homeland Security Grant Program/Operation Stonegarden (OPSG) to border states to enhance the capabilities of law enforcement agencies to secure our borders. The grant funding is intended to enhance cooperation and coordination between Federal, State and local law enforcement agencies in a joint mission to secure the United States' borders along routes of ingress from international borders, including travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. OSPG grant funding supports these states in the following areas:

- Increasing capability to prevent, protect against, and respond to border security issues
- Encouraging local operational objectives and capabilities to enhance National and State Homeland Security Strategies
- Increasing coordination and collaboration among Federal, State, local and tribal law enforcement agencies
- Continuing the distinct capability enhancements required for border security and border protection
- Providing intelligence-based operations through Customs and Border Protection/Border Patrol (CBP/BP) Sector Level experts to ensure safety and operational oversight of Federal, State, local and tribal law enforcement agencies participating in OPSG operational activities
- Continuing to increase operational, material and technological readiness of State, local and tribal law enforcement agencies

The California Governor's Office of Emergency Services (CalOES) is the State Administrative Agency for California and, therefore, is the eligible applicant for OPSG funding on behalf of County-level recipients. Since 2009, the Orange County Sheriff-Coroner Department has received OPSG funding as a sub-recipient of funds passed through the County of San Diego. Other sub-recipients of OPSG grant funding passed through the County of San Diego include the San Diego County Sheriff's Department, San Diego County Probation, several city police departments in San Diego County, the San Diego Unified Port District, the University of California San Diego, the Counties of Los Angeles, Monterey, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz and Ventura, and the California Highway Patrol and other state agencies. The grants funds are intended to be used to close a gap in human trafficking, drug smuggling, drug cartel and gang activity, and threat interdiction identified by Customs and Border Protection/Border Patrol (CBP/BP) and the San Diego County Sheriff's Department. As the San Diego County Sheriff's Department has increased its prevention and interdiction activities, criminal activity is perceived to be circumventing San Diego law enforcement by establishing alternative maritime or land-based routes, which potentially impact the County of Orange.

If awarded, the Orange County Sheriff-Coroner Department intends to return to the Board of Supervisors to accept the funding.

Board Resolution Required?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	Nicole Sims, Supervising Deputy County Counsel, has reviewed and approved the application.
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Recommended Action/Special Instructions
(Please specify below)

Sheriff-Coroner (Sheriff) requests retroactive authorization for the application and for Sheriff, or designee, to sign all necessary documents required for the submission of the application and supporting documentation to the County of San Diego.

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
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Administrative Manager Yumi Leung, YLeung@ocsheriff.gov, (714) 834-6674

Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
--	--

Lt. Gary Lewellyn
Sgt. Jeffrey Tucker



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 11, 2022
Requesting Agency/Department:	Sheriff-Coroner Department
Grant Name and Project Title:	Boating Safety and Enforcement Equipment (BSEE) Grant Program
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	State of California, Division of Boating and Waterways
Application Amount Requested:	\$150,000
Application Due Date:	April 29, 2022
Board Date when Board Approved this Application:	April 26, 2022
Awarded Funding Amount:	\$101,500
Notification Date of Funding Award:	September 27, 2022
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	2017: \$ 50,000 (Not awarded) 2018: \$100,000 (Not awarded) 2019: \$ 40,860 (Not awarded) 2020: \$ 40,000 (Awarded)
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
<p>The Division of Boating and Waterways (DBW) receives funding for the Boating Safety and Enforcement Equipment (BSEE) program from the U.S. Coast Guard Recreational Boating Safety (RSB) grant program. The BSEE grant program aims to offer grants to local government agencies that provide boating safety and law enforcement services and demonstrate a need for assistance to purchase related equipment. The grant funding can purchase law enforcement patrol boats, marine patrol equipment, rescue watercraft, search and rescue equipment, dive gear, and patrol boat engines, either new, repowers, or replacements.</p> <p>The Orange County Sherriff's Department, Harbor Patrol Bureau, provides around-the-clock services to the citizens of Orange County, its 42 miles of coastline, and within the county's three significant harbors at Newport Beach, Sunset-Huntington, and Dana Point. Our law enforcement responsibility is to monitor vessel traffic for municipal, county, and state violations and conduct boater education to ensure the community's safety. In addition, the harbor Patrol Bureau works closely with local and federal government agencies, sharing information for the detection and prevention of suspected acts of terrorism.</p>	



**CEO-Legislative Affairs Office
Grant Authorization eForm**

The Harbor Patrol Bureau's fleet consists of six fully equipped fireboats and ten patrol boats that consist of multiple configurations and capabilities to meet the demands of day-to-day operations. The OCSD Harbor Patrol Bureau provides immediate aid and lifesaving assistance to those in distress or imminent danger. It is imperative to officer safety to give the deputies the ability to navigate safely within the harbors and along the county coastline. Therefore, providing our officers with safety gear and other equipment would allow us more opportunities to safely deliver the underwater search and recovery services for the varied duties of evidence and body recoveries, boating accident investigation on sunken or damaged vessels, and emergency inspections. The grant period is a one-year cycle, commencing on October 1, 2022, and ending on September 30, 2023.

The Sheriff-Coroner Department intends to use the grant funding to purchase boating safety equipment such as headsets, GPS, and Flir night visions.

<p>Board Resolution Required? (Please attach document to eForm)</p> <p>Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Wendy Phillips, Senior Deputy County Counsel, has reviewed and approved the grant award documents and resolution.</p>
<p>Recommended Action/Special Instructions (Please specify below)</p>	
<p>Authorize the Sheriff-Coroner or designee to sign all necessary documents required for the acceptance of the grant award from the Division of Boating and Waterways.</p>	
<p>Department Contact :</p>	<p>List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.</p>
<p>Monique Vansuch, Administrative Manager MVansuch@ocsheriff.gov (714) 834-3201</p>	
<p>Name of the individual attending the Board Meeting:</p>	<p>List the name of the individual who will be attending the Board Meeting for this Grant Item:</p>
<p>Jeffry Tucker, Sergeant jytucker@ocsheriff.gov (714) 833-4919</p>	

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

October 18, 2022

A RESOLUTION TO ACCEPT GRANT FUNDS FROM THE
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION,
DIVISION OF BOATING AND WATERWAYS, FOR BOATING
SAFETY AND ENFORCEMENT EQUIPMENT

WHEREAS, the County of Orange, Sheriff-Coroner, applied to the California Department of Parks and Recreation, Division of Boating and Waterways, for boating safety and enforcement equipment for the **Sheriff-Coroner of the County of Orange**; and

WHEREAS, the California Department of Parks and Recreation, Division of Boating and Waterways, has approved **Sheriff-Coroner of the County of Orange** to receive **\$101,500** in boating safety and enforcement equipment grand funds and now requires a resolution accepting these grant funds.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the **County of Orange** as follows:

Sheriff-Coroner Don Barnes is hereby authorized to accept a California Department of Parks and Recreation, Division of Boating and Waterways, grant in the amount of \$101,500 for boating safety and enforcement equipment on behalf of the **Sheriff-Coroner of the County of Orange**, a public entity established under the laws of the State of California.

BE IT FURTHER RESOLVED, the following positions are authorized to execute, on behalf of the County of Orange, all documents necessary to accept the grant:

- Sheriff-Coroner – Don Barnes
- Undersheriff – Jeff Hallock
- Assistant Sheriff – Ross Caouette
- Executive Director – Brian Wayt
- Director Financial/Administrative Services – Noma M. Crook

BE IT FURTHER RESOLVED, to Authorize the positions mentioned above to execute, on behalf of the County of Orange, any future documents with the California Department of Parks and Recreation, Division of Boating and Waterways, if those actions do not materially change the terms or amounts of the County's commitment as it is reflected in all above-referenced grant application and assurances.

BE IT FURTHER RESOLVED that this Board will not provide matching grant funds.



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 11, 2022
Requesting Agency/Department:	Sheriff-Coroner Department
Grant Name and Project Title:	FY 2022 Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies.
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	U.S. Department of Justice, Office of Justice Programs.
Application Amount Requested:	\$400,000
Application Due Date:	May 25, 2022
Board Date when Board Approved this Application:	May 24, 2022
Awarded Funding Amount:	\$400,000
Notification Date of Funding Award:	September 29, 2022
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	FY 2021: \$2,000,000 (Not awarded)
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input checked="" type="checkbox"/> Amount _____ or <u>100 % Match</u> No <input type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	The Sheriff-Coroner Department will meet the matching requirement with 150 licenses and internet fees.
Will the grant/program create new part or full-time positions?	No.
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.

The Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (BWCPIP-LEA) is a competitive grant program designed to provide funding directly to law enforcement agencies. The goal of BWCPIP-LEA is to support the purchase of body-worn cameras (BWCs) to establish or expand comprehensive body-worn camera programs with a specific plan to implement the technology to maximize the benefits of BWCs and further the U.S. Department of Justice (DOJ) mission by promoting the safe and fair administration of justice.

The BWCPIP-LEA aims to integrate the BWC programs to help increase trust and communication between the police and the community. BWCs are an essential tool because they can be an integrated part of a jurisdiction's holistic problem-solving and community engagement strategy. It can be highly effective when visual records of interactions can capture empirical evidence in a crime, police-citizen, or use-of-force incident. In addition, the effective management of data generated from BWCs and the sharing of digital evidence is vital to modern law enforcement practices and the prosecutors' offices, defense counsel, and the judiciary.



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Grant Authorization eForm**

The Orange County Sheriff's Department (OCS D) is among the largest in the nation, providing exemplary law enforcement services focused on a collaborative, dedicated, and innovative approach to public safety in line with the core values of professionalism in the performance of duty and vigilance in safeguarding the community. Therefore, the OCS D would like to expand its body-worn camera program to provide its Mutual Aid and Reserve Bureaus with 200 additional cameras to support its mission.

The grant period is a three-year cycle, commencing on October 1, 2022, and ending on September 30, 2025.

The Sheriff-Coroner Department intends to use the grant funding to expand its program by purchasing 200 body-worn cameras and hardware with 150 licenses. This program will promote accountability, enhance public trust, and help deter criminal activity and uncooperative behavior during police-public interactions.

Board Resolution Required?

(Please attach document to eForm)

Yes

No

Deputy County Counsel Name:

(Please list the Deputy County Counsel that approved the Resolution)

Recommended Action/Special Instructions

(Please specify below)

Authorize the Sheriff-Coroner, or designee to sign all necessary documents required for the acceptance of the grant award from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

Nicole Sims, Supervising Deputy County Counsel, has reviewed the grant award documents.

Department Contact :

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Monique Vansuch, Administrative Manager
MVansuch@ocsheriff.gov
(714) 834-3201

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Sergeant Matthew Timmins – MTimmins@ocsheriff.gov (714) 834-5670



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	September 29, 2022																
Requesting Agency/Department:	Sheriff-Coroner Department																
Grant Name and Project Title:	FY 2022 DNA Capacity Enhancement and Backlog Reduction (CEBR) Program (Formula)																
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance																
Application Amount Requested:	\$500,000 (projected amount)																
Application Due Date:	July 12, 2022																
Board Date when Board Approved this Application:	June 7, 2022																
Awarded Funding Amount:	\$470,810																
Notification Date of Funding Award:	September 26, 2022																
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>																	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:																
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	<table border="1"> <thead> <tr> <th>Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2021</td> <td>\$429,769</td> </tr> <tr> <td>2020</td> <td>\$405,643</td> </tr> <tr> <td>2019</td> <td>\$391,936</td> </tr> <tr> <td>2018</td> <td>\$531,869</td> </tr> <tr> <td>2017</td> <td>\$293,808</td> </tr> <tr> <td>2016</td> <td>\$282,734</td> </tr> <tr> <td>2015</td> <td>\$358,919</td> </tr> </tbody> </table>	Year	Amount	2021	\$429,769	2020	\$405,643	2019	\$391,936	2018	\$531,869	2017	\$293,808	2016	\$282,734	2015	\$358,919
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2017	\$293,808																
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2015	\$358,919																
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Program Grant																
County Match?	Yes <input type="checkbox"/> 0% No <input checked="" type="checkbox"/>																
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A																
Will the grant/program create new part or full-time positions?	N/A																
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.																
<p>Bureau of Justice Assistance (BJA) FY 2022 DNA Capacity Enhancement for Backlog Reduction (CEBR) Program provides funding to States and units of local government with existing crime laboratories to increase the capacity of publicly funded forensic DNA and DNA database laboratories and to process more DNA samples. This program reduces the backlog of forensic and database DNA samples. The Sheriff-Coroner has applied for this competitive program since 2004. In 2020, this CEBR grant was transferred to the BJA from the National Institute of Justice Program catalog.</p> <p>This grant provides both formula and discretionary allocations aimed at reducing evidence backlogs and improving the quality and timeliness of forensic science services. Awarded agencies may utilize funds to</p>																	



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hire additional full-time or part-time laboratory employees to directly perform capacity enhancement-specific activities, such as validating new DNA analysis technologies for the forensic DNA laboratory and/or the laboratory responsible for analysis of DNA database samples. Matching funds are not required.

The Sheriff-Coroner Department plans to fund overtime to process backlogged DNA casework at the Orange County Crime Laboratory, and to purchase new analytical instruments.

Board Resolution Required?

(Please attach document to eForm)

Yes

No

Deputy County Counsel Name:

(Please list the Deputy County Counsel that approved the Resolution)

Nicole A. Sims, Supervising Deputy County Counsel, has reviewed the grant award documents.

Recommended Action/Special Instructions

(Please specify below)

Authorize the Sheriff-Coroner, or designee, to sign all necessary documents required for the acceptance of the grant award from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

Department Contact :

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Director Stephanie Callian, Orange County Crime Lab (714) 834-4510 scallian@ocsheriff.gov

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Director Stephanie Callian or designee



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 6, 2022																				
Requesting Agency/Department:	Sheriff-Coroner Department																				
Grant Name and Project Title:	2022 Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program																				
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	U.S. Department of Justice, Office of Justice Programs																				
Application Amount Requested:	\$464,954																				
Application Due Date:	August 8, 2022																				
Board Date when Board Approved this Application:	July 19, 2022																				
Awarded Funding Amount:	\$464,954																				
Notification Date of Funding Award:	September 26, 2022																				
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>																					
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:																				
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	<table border="1"> <thead> <tr> <th>Grant Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2013</td> <td>\$420,826</td> </tr> <tr> <td>2014</td> <td>\$434,569</td> </tr> <tr> <td>2015</td> <td>\$365,772</td> </tr> <tr> <td>2016</td> <td>\$377,708</td> </tr> <tr> <td>2017</td> <td>\$376,349</td> </tr> <tr> <td>2018</td> <td>\$410,195</td> </tr> <tr> <td>2019</td> <td>\$401,800</td> </tr> <tr> <td>2020</td> <td>\$365,643</td> </tr> <tr> <td>2021</td> <td>\$427,301</td> </tr> </tbody> </table>	Grant Year	Amount	2013	\$420,826	2014	\$434,569	2015	\$365,772	2016	\$377,708	2017	\$376,349	2018	\$410,195	2019	\$401,800	2020	\$365,643	2021	\$427,301
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2021	\$427,301																				
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																				
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Formula Program																				
County Match?	Yes <input type="checkbox"/> Amount ____ or ____ % No <input checked="" type="checkbox"/>																				
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A																				
Will the grant/program create new part or full-time positions?	N/A																				
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.																				
The Edward Byrne Memorial Justice Assistance Grant (JAG) program is the primary source of federal justice funding to state and local government jurisdictions. This program furthers the U.S. Department of Justice's (DOJ) mission by assisting local and tribal law criminal justice efforts to prevent or reduce crime and violence to improve the administration of the criminal justice system.																					
The FY 2022 JAG program provides funding to state and local governments to support a range of																					



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program areas that will help improve the functioning of the criminal justice system with an emphasis on violent crime and severe offenses. Eligible local jurisdictions will use the allocated funds to support projects related to criminal justice priorities and to further law enforcement initiatives, including hiring additional personnel, purchasing equipment, allowable supplies, contractual support, training, technical assistance, and information systems for criminal justice.

The Sheriff-Coroner Department will serve as the County fiscal agent and submit a single application representing the interests of all eligible jurisdictions receiving JAG allocations. The Sheriff's grant management personnel will provide oversight for the grant, the agencies, the submission of the application, and related documentation. The Grant Unit will also submit quarterly financial, programmatic, and annual progress reports required for the life of this grant and annual compliance monitoring reviews.

As the fiscal agent, the Sheriff submitted a single application representing the interests of the units of local governments that are eligible to receive funding allocations. This application includes Orange County (Sheriff), Anaheim, Buena Park, Costa Mesa, Fullerton, Garden Grove, Huntington Beach, La Habra, Irvine, Orange, Placentia, Santa Ana, Tustin, and Westminster.

Board Resolution Required?
(Please attach document to eForm)

 Yes

 No
Deputy County Counsel Name:
(Please list the Deputy County Counsel that approved the Resolution)

Nicole Sims, Supervising Deputy County Counsel, has reviewed the grant award documents.

Recommended Action/Special Instructions
(Please specify below)

Authorize the Sheriff-Coroner or designee to accept, on behalf of the County of Orange, the 2022 Edward Byrne Memorial Justice Assistant Grant (JAG) Program award from the Bureau of Justice Assistance Programs, Department of Justice.

Department Contact :
List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Monique Vansuch, Administrative Manager
 MVansuch@ocsheriff.gov
 (714) 834-3201

Name of the individual attending the Board Meeting:
List the name of the individual who will be attending the Board Meeting for this Grant Item:

Monique Vansuch, Administrative Manager
 MVansuch@ocsheriff.gov
 (714) 834-3201

Miriam Torrez, Grant Program Specialist
 MTorrez@ocsheriff.gov
 (714) 834-4347



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / **GRANT AWARD**

Today's Date:	October 11, 2022
Requesting Agency/Department:	OC Public Works
Grant Name and Project Title:	Measure M2 Comprehensive Transportation Funding Programs, Regional Capacity Program (RCP) Arterial Capacity Enhancements (ACE) – Cow Camp Road Segment 2C-2A Project
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	Orange County Transportation Authority
Application Amount Requested:	\$ 8,944,150
Application Due Date:	October 20, 2022
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Award:	N/A
Is this an Authorized Retroactive Grant Application/Award? (If yes, attach memo to CEO) No	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain: Every Year
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	<ol style="list-style-type: none"> 1. Cow Camp Road – Segment 2A & 2B (Construction) - \$14,278,770 2. Cow Camp Road – Segment 2 (Engineering Phase) - \$3,250,000 3. Oso Parkway and Antonio Parkway Intersection Improvements (Construction Phase) - \$792,669 4. Ortega Highway Widening Improvements (PA & ED Phase) - \$1,950,000
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input checked="" type="checkbox"/> Amount \$ 8,944,150 No <input type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	\$ 8,944,150 (50%); County match will be fulfilled by matching funds from Rancho Mission Viejo.
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The construction of Cow Camp Road Segment 2C-2A begins east of the intersection of Coyotes Way and extends east to include the intersection of Gibby Road. Proposed improvements include construction of a new roadway with two lanes in each direction, a multi-use/shared use path and a sidewalk.</p> <p>OCTA has approved this alignment as part of the MPAH and has provided past funding approvals for construction phase of Segments 2A and 2B, and engineering phase of entire Segment 2.</p> <p>The estimated total construction cost of Cow Camp Road Segment 2C-2A Project is \$17,888,300. The requested grant amount is (50%) \$8,944,150. The local match of \$8,944,150 (50%) will be fulfilled by funds from Rancho Mission Viejo via a future cooperative agreement.</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	Ray Diaz
Recommended Action/Special Instructions <small>(Please specify below)</small>	
Authorize the Director of OC Public Works or designee to: <ol style="list-style-type: none">1. File and sign application for Measure M2 Comprehensive Transportation Funding Programs, Regional Capacity Program (RCP) – Arterial Capacity Enhancements (ACE) – Cow Camp Road Segment 2C-2A Project;2. Request the Orange County Transportation Authority to allocate funds in the amounts specified in the Comprehensive Transportation Funding Programs, Regional Capacity Program (RCP) – Arterial Capacity Enhancements (ACE) application for Cow Camp Road Segment 2C-2A Project;3. Accept funding monies, sign cooperative agreements and any amendments to cooperative agreements with the Orange County Transportation Authority for Cow Camp Road Segment 2C-2A Project;4. Execute a cooperative agreement with Rancho Mission Viejo to provide matching funds, upon notification of the funding award for Cow Camp Road Segment 2C-2A Project;	
Department Contact :	<small>List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.</small>
Sonica Kohli, 714/647-3910, Sonica.Kohli@ocpw.ocgov.com	
Name of the individual attending the Board Meeting:	<small>List the name of the individual who will be attending the Board Meeting for this Grant Item:</small>
Kevin Onuma, County Engineer, OC Public Works Nardy Khan, Deputy Director, OC Infrastructure Programs, OC Public Works	

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

October 18, 2022

A resolution of the Board of Supervisors of Orange County approving the submittal of Cow Camp Road Segment 2C-2A Project to the Orange County Transportation Authority for funding under the Comprehensive Transportation Program

THE BOARD OF SUPERVISORS OF ORANGE COUNTY HEREBY RESOLVES, DETERMINES, AND ORDERS AS FOLLOWS THAT:

WHEREAS, the County of Orange (County) desires to implement the transportation improvements listed below; and

WHEREAS, the County has been declared by the Orange County Transportation Authority to meet the eligibility requirements to receive M2 "Fair Share" funds; and

WHEREAS, the County's Circulation Element is consistent with the County of Orange Master Plan of Arterial Highways; and

WHEREAS, the County will not use M2 funds to supplant Developer Fees or other commitments;

WHEREAS, the County must include all projects funded by Net Revenues in the seven-year Capital Improvement Program as part of the Measure M2 Ordinance eligibility requirement.

WHEREAS, the County will provide a minimum in 25% in matching funds for the Cow Camp Road Segment 2C-2A Project as required by the Orange County Comprehensive Transportation Funding Programs Guidelines; and

WHEREAS, the Orange County Transportation Authority intends to allocate funds for transportation improvement projects, if approved, within the incorporated cities and the County; and

WHEREAS, the County authorizes a formal amendment to the seven-year Capital Improvement Program to add projects approved for funding upon approval from the Orange County Transportation Authority Board of Directors, if necessary.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board of Supervisors of Orange County hereby requests the Orange County Transportation Authority allocate funds in the amounts specified in the County's application to County from the Comprehensive Transportation Funding Programs. Said funds, if approved, shall be matched by funds from County as required and shall be used as supplemental funding to aid the County in the improvement of Cow Camp Road Segment 2C-2A.



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 11, 2022
Requesting Agency/Department:	OC Public Works
Grant Name and Project Title:	Floodplain Management, Protection, and Risk Awareness Grant Program- Orange County Floodplain Management Plan Project
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	Administrating Agency: State of California, Department of Water Resources
Application Amount Requested:	\$975,000
Application Due Date:	February 9, 2022
Board Date when Board Approved this Application:	February 8, 2022
Awarded Funding Amount:	\$975,000
Notification Date of Funding Award:	October 4, 2022
Is this an Authorized Retroactive Grant Application/Award? (If yes, attach memo to CEO) No	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input checked="" type="checkbox"/> Amount \$325,000(25% match) No <input type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	Fund 400
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The Floodplain Management, Protection and Risk Awareness Grant Program supports local agency efforts to prepare for flooding by providing financial assistance for flood risk reduction activities related to stormwater flooding, mudslides, and flash floods. The Orange County Floodplain Management Plan will cover the entire Westminster Watershed, the Santa Ana River within Orange County, as well as communities with Orange County that currently participate in the Community Rating System (CRS) program.</p> <p>The total project cost is estimated at \$1,300,000. The grant award is for \$975,000 and the required 25% County match is \$325,000.</p>	
Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	N/A
Recommended Action/Special Instructions <small>(Please specify below)</small>	
1. Authorize the Director of OC Public Works, or designee, to accept grant funds for the Orange County Floodplain Management Plan Project.	



CEO-Legislative Affairs Office Grant Authorization eForm

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Sonica Kohli, 714/647-3910, Sonica.Kohli@ocpw.ocgov.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Kevin Onuma, County Engineer, OC Public Works Nardy Khan, Deputy Director, OC Infrastructure Programs, OC Public Works	



CEO-Legislative Affairs Office Grant Authorization eForm

describes the HDAP services and activities that would be provided through subcontracted service providers. The MOU was most recently amended on January 22, 2020, to reflect the Office of Care Coordination agency reorganization to HCA. The selected providers were approved by the Board on April 3, 2019 and are currently administering HDAP services to eligible participants through sole source contracts in each Service Planning Area - North, Central, and South. The subcontracted providers leverage other County-funded contracts and services with HDAP to maximize available resources and also provide targeted interventions that help individuals experiencing homelessness access benefits and income and secure permanent housing. On July 1, 2021, a new MOU was signed between SSA and OCCR to continue the collaborative efforts in meeting objectives and to comply with on-going State obligations for HDAP. The MOU will be amended to include an updated term and an updated budget once the funds have been approved by the Board and awarded by the State, as well as the reorganization of the Office of Care Coordination to County Executive Office.

The California Budget Act of 2022 appropriated \$285 million for HDAP statewide in FY 2022-23 to establish, continue and expand housing and homelessness assistance through the program. On September 21, 2022, CDSS issued an All County Welfare Director Letter announcing the FY 2022-23 application opportunity for HDAP funds. This includes the County's non-competitive allocation in the amount of \$7,659,238, available for the expenditure period of July 1, 2022, to June 30, 2024. The letter summarizes recent statutory changes enacted through AB 135 (Chapter 85, Statutes of 2021), outlines continuing HDAP requirements and guidance and provides new guidance as a result of expanded funding and changes to program statute.

CDSS recommends that counties review and submit a Director's Certification by November 2, 2022, to expedite receipt of grant funds available through the Noncompetitive Allocation. All grantees must submit documentation by November 2, 2022, to receive funds. SSA is now bringing the application for the HDAP FY 2022-23 allocation funds to the Board for approval and will bring back to the Board for approval any award agreement received subsequent to the application submission.

Approval of this application for funds will allow for continuity and development of HDAP services and provide a needed resource to the System of Care as the County continues to address homelessness in our community.

Board Resolution Required?

(Please attach document to eForm)

 Yes

 No
Deputy County Counsel Name:

(Please list the Deputy County Counsel that approved the Resolution)

Recommended Action/Special Instructions

(Please specify below)

Authorize the Social Services Agency Director or designee to apply for the Housing and Disability Advocacy Program allocation in the amount of \$7,659,238 and execute an agreement with the State of California Department of Social Services to administer the Housing and Disability Advocacy Program funds.

Department Contact:

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

 An Tran, 714-541-7773, An.Tran@ssa.ocgov.com
Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

 An Tran, 714-541-7773, An.Tran@ssa.ocgov.com



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 18, 2022
Requesting Agency/Department:	Social Services Agency
Grant Name and Project Title:	Transitional Housing Program (THP) – Round 2
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Housing and Community Development (HCD)
Application Amount Requested:	\$208,000
Application Due Date:	November 12, 2020
Board Date when Board Approved this Application:	October 20, 2020
Awarded Funding Amount:	\$208,000
Notification Date of Funding Award:	December 2, 2020
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	\$208,000
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Allocated funds defined by HCD.
County Match?	Yes <input type="checkbox"/> Amount _____ or _____% No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No.
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The Department of Housing and Community Development has requested amended resolutions listing the authorized representative by title only in order to sign the current Standard Agreements.</p> <p>The Transitional Housing Program (THP) helps young adults who are 18 to 24 years of age secure and maintain housing. Use of funds may include, but are not limited to:</p> <ol style="list-style-type: none"> 1) Identify and assist housing services for this population in your community; 2) Assist this population to secure and maintain housing (with priority given to those in the state's foster care or probation system); 3) Improve coordination of services and linkages to community resources within the child welfare system and the Homeless Continuum of Care; and 4) Provide engagement in outreach and targeting to serve those with the most severe needs. <p>The Board approved the original allocation for THP Round 2 on October 20, 2020.</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

Board Resolution Required? (Please attach document to eForm)	Yes <input checked="" type="checkbox"/>	No
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	John Cleveland	
Recommended Action/Special Instructions (Please specify below)		
<ol style="list-style-type: none">1. Authorize the Social Services Agency Director or designee to execute an agreement and any related documents with the State of California Department of Housing and Community Development to administer the Transitional Housing Program funds.2. Adopt the attached Resolution for the California Department of Housing and Community Development Transitional Housing Program.		
Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.	
An Tran, 714-541-7773, An.Tran@ssa.ocgov.com		
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:	
An Tran, 714-541-7773, An.Tran@ssa.ocgov.com		

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
October 18, 2022

WHEREAS, the State of California, Department of Housing and Community Development (“Department”) issued an Allocation Acceptance form, dated July 27, 2020 under the Transitional Housing Program (“THP” or “Program”) for \$8 million authorized by item 2240-102-0001 of section 2.00 of the Budget Act of 2020 (Chapter 6 of the Statutes of 2020) and Chapter 11.7 (commencing with Section 50807) of part 2 of Division 31 of the Health and Safety Code; and

WHEREAS, the Allocation Acceptance form relates to the availability of the TRANSITIONAL HOUSING PROGRAM Allocation funds; and

WHEREAS, the County of Orange Social Services Agency (“Applicant”), was listed as an eligible applicant in the Allocation Acceptance form, dated July 27, 2020.

NOW, THEREFORE, BE IT RESOLVED that that the Board of Supervisors for the County of Orange (“County”) does hereby determine and declare as follows:

1. That Applicant is hereby authorized and directed to apply for and accept their TRANSITIONAL HOUSING PROGRAM Allocation award, as detailed in the Allocation Acceptance form and estimated at \$208,000, up to the amount authorized by the Allocation Acceptance form and applicable state law.
2. That the Director of the County of Orange Social Services Agency, or designee, is hereby authorized and directed to act on behalf of County in connection with the TRANSITIONAL HOUSING PROGRAM Allocation award, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to be awarded the TRANSITIONAL HOUSING PROGRAM Allocation award, and all amendments thereto (collectively, the “TRANSITIONAL HOUSING PROGRAM

Allocation Award Documents”).

3. That Applicant shall be subject to the terms and conditions that are specified in the TRANSITIONAL HOUSING PROGRAM Allocation Award Documents, and that Applicant will use the TRANSITIONAL HOUSING PROGRAM Allocation award funds in accordance with the Allocation Acceptance form, other applicable rules and laws, the THP Program Documents, and any and all THP requirements.

PASSED AND ADOPTED this _____ [Insert Numerical Day] day of _____ [Insert Month], 20____ [Insert Year, Preceded by 20], by the following vote:

AYES _____ [Insert Number of Ayes]

NOES _____ [Insert Number of Noes]

ABSTENTIONS _____ [Insert Number of Abstentions]

ABSENT _____ [Insert Number Absent]

Signature of Attesting Officer: _____

Printed Name and Title of Attesting Officer: _____



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 18, 2022
Requesting Agency/Department:	Social Services Agency
Grant Name and Project Title:	Transitional Housing Program (THP) – Round 3
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Housing and Community Development (HCD)
Application Amount Requested:	\$208,000
Application Due Date:	November 12, 2021
Board Date when Board Approved this Application:	November 2, 2021
Awarded Funding Amount:	\$208,000
Notification Date of Funding Award:	December 2, 2021
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	\$208,000
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Allocated funds defined by HCD.
County Match?	Yes <input type="checkbox"/> Amount _____ or _____% No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No.
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The Department of Housing and Community Development has requested amended resolutions listing the authorized representative by title only in order to sign the current Standard Agreements.</p> <p>The Transitional Housing Program (THP) helps young adults who are 18 to 24 years of age secure and maintain housing. Use of funds may include, but are not limited to:</p> <ol style="list-style-type: none"> 1) Identify and assist housing services for this population in your community; 2) Assist this population to secure and maintain housing (with priority given to those in the state's foster care or probation system); 3) Improve coordination of services and linkages to community resources within the child welfare system and the Homeless Continuum of Care; and 4) Provide engagement in outreach and targeting to serve those with the most severe needs. <p>The Board approved the original allocation for THP Round 3 on November 2, 2021.</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

Board Resolution Required? (Please attach document to eForm)	Yes <input checked="" type="checkbox"/>	No
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	John Cleveland	
Recommended Action/Special Instructions (Please specify below)		
1. Authorize the Social Services Agency Director or designee to execute an agreement and any related documents with the State of California Department of Housing and Community Development to administer the Transitional Housing Program funds. 2. Adopt the attached Resolution for the California Department of Housing and Community Development Transitional Housing Program.		
Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.	
An Tran, 714-541-7773, An.Tran@ssa.ocgov.com		
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:	
An Tran, 714-541-7773, An.Tran@ssa.ocgov.com		

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
October 18, 2022

WHEREAS, the State of California, Department of Housing and Community Development (“Department”) issued an Allocation Acceptance form, dated October 1, 2021 under the Transitional Housing Program (“THP” or “Program”) for \$8 million authorized by item 2240-102-0001 of section 2.00 of the Budget Act of 2021 (Chapter 69 of the Statutes of 2021) and Chapter 11.7 (commencing with Section 50807) of part 2 of Division 31 of the Health and Safety Code (the “Allocation Acceptance Form”); and

WHEREAS, the Allocation Acceptance form relates to the availability of the funds under the Program; and

WHEREAS, the County of Orange was listed as an eligible applicant in the Allocation Acceptance form, dated October 1, 2021.

NOW, THEREFORE, BE IT RESOLVED that that the Board of Supervisors for the County of Orange (“County”) does hereby determine and declare as follows:

1. That County is hereby authorized and directed to apply for and accept County’s allocation award, as detailed in the Allocation Acceptance form (the “THP Allocation Award”) and estimated at \$208,000, up to the amount authorized by the Allocation Acceptance form and applicable state law.
2. That if funds remain available for allocation after the deadline for submitting a signed Allocation Acceptance Form, and if the Department advises County that County is eligible for an additional allocation from these remaining funds, County is hereby authorized and directed to accept this additional allocation of funds (“Additional THP Allocation”) up to the amount authorized by Department.
3. That the Director of the County of Orange Social Services Agency, or designee, is

hereby authorized and directed to act on behalf of County in connection with the THP Allocation Award and any Additional THP Allocation, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to be participate in the Program and be awarded the THP Allocation Award, and any Additional THP Allocation, and any amendments to such documents (collectively, the “THP Allocation Award Documents”).

4. That County shall be subject to the terms and conditions that are specified in the THP Allocation Award Documents, and that County will use the THP Allocation Award funds and any Additional THP Allocation funds in accordance with the Allocation Acceptance Form, the THP Allocation Award Documents, and any and all other THP requirements, and other applicable laws.

PASSED AND ADOPTED this _____ [Insert Numerical Day] day of _____ [Insert Month], 20____ [Insert Year, Preceded by 20], by the following vote:

AYES _____ [Insert Number of Ayes]

NOES _____ [Insert Number of Noes]

ABSTENTIONS _____ [Insert Number of Abstentions]

ABSENT _____ [Insert Number Absent]

By: _____

[Below Signature Line Insert Printed Name and Title
Of Chairman of Board of Supervisors]

STATE OF CALIFORNIA

County of [_____]

I, [_____], County Clerk of the County of [_____], State of California,
hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted
by the County Board of Supervisors on this _____ [Insert Numerical Day] day of _____
[Insert Month], 20____ [Insert Year, Preceded by 20]

[Insert Printed name of County Clerk Here]

Clerk of the County of [_____], State of California

By: _____

[Insert Printed Name and Title]



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 18, 2022
Requesting Agency/Department:	Social Services Agency
Grant Name and Project Title:	Housing Navigators Program (HNP) – Round 2
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Housing and Community Development (HCD)
Application Amount Requested:	\$221,210
Application Due Date:	November 12, 2021
Board Date when Board Approved this Application:	November 2, 2021
Awarded Funding Amount:	\$221,210
Notification Date of Funding Award:	December 2, 2021
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	\$221,210
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Allocated funds defined by HCD.
County Match?	Yes <input type="checkbox"/> Amount _____ or _____% No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No.
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The Department of Housing and Community Development has requested amended resolutions listing the authorized representative by title only in order to sign the current Standard Agreements.</p> <p>The Housing Navigators Program funds housing navigators for county child welfare agencies. The role of a housing navigator is to act as a housing specialist to assist young adults with their pursuits of locating available housing and overcoming barriers to locating housing. Housing navigator activities may include, but are not limited to:</p> <ol style="list-style-type: none"> 1) Assist young adults aged 18-21 secure and maintain housing (with priority given to young adults in the state's foster care system); 2) Provide housing case management which include essential services in emergency supports to foster youth; 3) Prevent young adults from becoming homeless; and 4) Improve coordination of services and linkages to key resources across the community including those from within the child welfare system and the local Continuum of Care. <p>The Board approved the original allocation on November 2, 2021.</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

Board Resolution Required? (Please attach document to eForm)	Yes <input checked="" type="checkbox"/>	No
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	John Cleveland	
Recommended Action/Special Instructions (Please specify below)		
<ol style="list-style-type: none">1. Authorize the Social Services Agency Director or designee to execute an agreement and any related documents with the State of California Department of Housing and Community Development to administer the Housing Navigators Program funds.2. Adopt the attached Resolution for the California Department of Housing and Community Development Housing Navigators Program.		
Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.	
An Tran, 714-541-7773, An.Tran@ssa.ocgov.com		
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:	
An Tran, 714-541-7773, An.Tran@ssa.ocgov.com		

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
October 18, 2022

WHEREAS, the State of California, Department of Housing and Community Development (“Department”) issued an Allocation Acceptance form, dated October 1, 2021 under the Housing Navigators Program (“HNP” or “Program”) for \$5 million authorized by item 2240-103-0001 of section 2.00 of the Budget Act of 2019 (SB 109) as amended by Section 2.00 of Chapter 21 of the Statutes of 2021 (AB 128); and

WHEREAS, the Allocation Acceptance form relates to the availability of the funds under the Program; and

WHEREAS, the County of Orange was listed as an eligible applicant in the Allocation Acceptance form, dated October 1, 2021.

NOW, THEREFORE, BE IT RESOLVED that that the Board of Supervisors for the County of Orange (“County”) does hereby determine and declare as follows:

1. That County is hereby authorized and directed to apply for and accept County’s allocation award, as detailed in the Allocation Acceptance form (the “HNP Allocation Award”) and estimated at \$221,210, up to the amount authorized by the Allocation Acceptance form and applicable state law.
2. That if funds remain available for allocation after the deadline for submitting a signed Allocation Acceptance Form, and if the Department advises County that County is eligible for an additional allocation from these remaining funds, County is hereby authorized and directed to accept this additional allocation of funds (“Additional HNP Allocation”) up to the amount authorized by Department.
3. That the Director of the County of Orange Social Services Agency, or designee, is hereby authorized and directed to act on behalf of County in connection with the HNP

Allocation Award and any Additional HNP Allocation, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to be participate in the Program and be awarded the HNP Allocation Award, and any Additional HNP Allocation, and any amendments to such documents (collectively, the “HNP Allocation Award Documents”).

4. That County shall be subject to the terms and conditions that are specified in the HNP Allocation Award Documents, and that County will use the HNP Allocation Award funds and any Additional HNP Allocation funds in accordance with the Allocation Acceptance Form, the HNP Allocation Award Documents, and any and all other HNP requirements, and other applicable laws.

PASSED AND ADOPTED this _____ [Insert Numerical Day] day of _____ [Insert Month], 20____ [Insert Year, Preceded by 20], by the following vote:

AYES _____ [Insert Number of Ayes]

NOES _____ [Insert Number of Noes]

ABSTENTIONS _____ [Insert Number of Abstentions]

ABSENT _____ [Insert Number Absent]

By: _____

[Below Signature Line Insert Printed Name And Title

Of Chairman Of Board Of Supervisors]

STATE OF CALIFORNIA

County of [_____]

I, [_____], County Clerk of the County of [_____], State of California,
hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted
by the County Board of Supervisors on this _____ [Insert Numerical Day] day of _____
[Insert Month], 20____ [Insert Year, Preceded by 20]

[Insert Printed name of County Clerk Here]

Clerk of the County of [_____], State of California

By: _____

[Insert Printed Name and Title]

Retroactive Grant Memorandum

Date: 10/11/2022
To: County Executive Office
From: Dylan Wright, Director, OC Community Resources
Re: CALFORALLANIMALS "Sniptember" Spay / Neuter Grant
Subject: Retroactive Request to Approve Grant Application

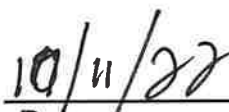
OC Community Resources/OC Animal Care (OCCR/OCAC) received notice of a grant opportunity to increase capacity for spaying and neutering animals from CALFORALLANIMALS, a State of California mandate administered through the UC Davis Koret School of Veterinary Medicine. This is a state-funded initiative made possible in 2021 when Gov. Newsom signed budget legislation that included \$45 million in one-time support for a statewide Animal Shelter Assistance Program, an augmentation to \$5 million earmarked earlier in 2021. All municipal animal shelters in California are eligible to apply for this grant.

OCCR/OCAC learned of this grant opportunity on October 4, 2022, and the due date was October 15, 2022. Due to the short turn around, OCCR/OCAC was unable to submit for grant application approval prior to grant submission.

Accordingly, OCCR/OCAC is requesting retroactive approval to apply for CALFORALLANIMALS "Sniptember" Spay / Neuter Grant.



 Dylan Wright, Director
 OC Community Resources



 Date

Approved: 

 Frank Kim, County Executive Officer
 County Executive Office

Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of
 Orange, ou=CEO,
 email=frank.kim@ocgov.com,
 c=US
 Date: 2022.10.13 11:03:25 -07'00'

10/13/22

Date:



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 12, 2022
Requesting Agency/Department:	OC Community Resource/ OC Animal Care
Grant Name and Project Title:	CALFORALLANIMALS / Sniptember Spay / Neuter Grants
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	State of California / UC Davis Koret Shelter Medicine Program
Application Amount Requested:	\$426,282
Application Due Date:	October 15, 2022
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Award:	N/A
Is this an Authorized Retroactive Grant Application/Award? Yes <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Allocation of State of California funds open to all municipal shelters, but requiring a grant application
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
The purpose of the grant is to increase the capacity to perform spay and neuter surgeries which is key to reducing the population of unwanted pets. Grant activities are anticipated to include adding more surgery days (including weekends) to perform spay/neuter surgeries, hiring additional contract veterinarians to perform spay/neuter surgeries, and purchasing necessary medical supplies.	
Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	
Recommended Action/Special Instructions <small>(Please specify below)</small>	
Authorize the OC Community Resources Director or designee to apply for a State of California/ UC Davis Koret Shelter Medicine Program, "CALFORALLANIMALS" Grant and to sign all documents required for the grant application.	
Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Dylan Wright, Director, OC Community Resources (714) 480-2788, dylan.wright@occr.ocgov.com Andi Bernard, Director, OC Animal Care (714) 796-6414; andi.bernard@occr.ocgov.com	



CEO-Legislative Affairs Office Grant Authorization eForm

Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Dylan Wright, Director, OC Community Resources	

Grant Retroactive Memorandum

Date: 10/11/2022
To: County Executive Office
From: Dylan Wright, Director of OC Community Resources
Re: SNAP-Ed/CalFresh Healthy Living and Cal Fresh Expansion
 CF-2223-22
Subject: Request to Approve Retroactive Grant Award

OC Community Resources/Office on Aging (OCCR/OoA) received notification of the grant award for the Supplemental Nutrition Assistance Program Education for CalFresh Health Living (SNAP-Ed) on September 16, 2022, from the California Department of Aging (CDA).

Due to the length of time required to complete the administrative process and budget preparation, OCCR/OoA was unable to meet the deadline for the October 4, 2022, Board meeting and the next available Board date exceeded the 30-day deadline outlined in the Grants Policy Manual.

Accordingly, OCCR/OoA is requesting that the CEO accept this retroactive grant award and approve the acceptance of the funds allotted by the CDA for the SNAP-Ed program.



 Dylan Wright, Director
 OC Community Resources

10/11/22

 Date

Approved:



Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of
 Orange, ou=CEO,
 email=frank.kim@ocgov.com,
 c=US
 Date: 2022.10.13 11:01:28 -07'00'

 Frank Kim, County Executive Officer
 County Executive Office

10/13/22

 Date:



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	September 29, 2022
Requesting Agency/Department:	OC Community Resources/OC Community Services
Grant Name and Project Title:	SNAP-Ed/CalFresh Healthy Living and CalFresh Expansion
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Aging
Application Amount Requested:	\$1,027,806
Application Due Date:	N/A
Board Date when Board Approved this Application:	June 28, 2022
Awarded Funding Amount:	\$1,027,806
Notification Date of Funding Award:	September 16, 2022
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	FY 2019-2020: \$94,079
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: CDA allocates funding to the County through a formula grant.
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No.
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
CalFresh is an entitlement that provides low-income families with electronic benefits that can be used to purchase food at participating markets and food stores. The Supplemental Nutrition Assistance Program Education for CalFresh Health Living (SNAP-Ed) provides funding of direct and indirect education activities based on California Department of Aging (CDA) approved, evidence-based, nutrition education and obesity prevention programs to SNAP-Ed eligible population. CDA has an agreement with California Department of Social Services to provide funding to the Area Agencies on Aging (AAA) and has designated County of Orange Office on Aging, the County of Orange's AAA for outreach and application assistance to eligible older adults (60+) under the CalFresh Expansion funding. The funding will be used to reach 9,129 newly eligible Social Security Income recipients with outreach materials, help 3,760 people with application assistance, and submit 923 CalFresh applications. Additionally, in accordance with County mandates, the program will provide all outreach materials in the Board approved threshold languages.	
Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>



**CEO-Legislative Affairs Office
Grant Authorization eForm**

Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)		John Cleveland
Recommended Action/Special Instructions (Please specify below)		
<ol style="list-style-type: none">1. Adopt the resolution as approved by County Counsel to receive \$1,027,806 in funds from the California Department of Aging for the SNAP-Ed/CalFresh Healthy Living and CalFresh Expansion.2. Approve the State Standard Agreement CF-2223-22 with the California Department of Aging in the amount of \$1,027,806 for the term of October 1, 2022, through September 30, 2025, Contractor Certification Clauses, Information Integrity and Security Statement, and California Civil Rights Laws Certification.3. Authorize the OC Community Resources Director or designee to execute the State Standard Agreement CF-2223-22, Contractor Certification Clauses, Information Integrity and Security Statement, and California Civil Rights Laws Certification.4. Authorize the OC Community Resources Director or designee to execute all documents required to accept additional SNAP-Ed/CalFresh Healthy Living and CalFresh Expansion grant award funding up to the maximum annual allocation from CDA.		
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.	
Dylan Wright (714) 480-2788 / Dylan.Wright@occr.ocgov.com Renee Ramirez (714) 480-6483 / Renee.Ramirez@occr.ocgov.com		
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:	
Dylan Wright, Director, OC Community Resources		

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
October 18, 2022

WHEREAS, OC Community Resources Office on Aging has received State Standard Agreement CF-2223-22 in the amount of \$1,027,806 from the California Department of Aging; and

WHEREAS, the County of Orange assures that it will abide by the terms and conditions of Agreement CF-2223-22; and

WHEREAS this Board agrees with the terms of the State Standard Agreement and the allocation of funds contained therein.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Approve State Standard Agreement CF-2223-22, Certification of Clauses, Information Integrity and Security Statement, and California Civil Rights Laws Certification with the California Department of Aging in the amount of \$1,027,806 for the term October 1, 2022 through September 30, 2025.
2. Authorize the OC Community Resources Director or designee to execute State Standard Agreement CF-2223-22, Certification of Clauses, Information Integrity and Security Statement, and California Civil Rights Laws Certification with the California Department of Aging in the amount of \$1,027,806 for the term October 1, 2022 through September 30, 2025.
3. Authorize the OC Community Resources Director or designee to execute all documents required to accept additional funds up to the maximum annual allocation from the California Department of Aging under State Standard Agreement CF-2223-22.



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 7, 2022
Requesting Agency/Department:	OC Community Resources/OC Community Services (OCCR/OCCS)
Grant Name and Project Title:	Senior Nutrition Infrastructure
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Aging
Application Amount Requested:	N/A
Application Due Date:	N/A
Board Date when Board Approved this Application:	June 28, 2022
Awarded Funding Amount:	\$2,129,467
Notification Date of Funding Award:	September 27, 2022
Is this an Authorized Retroactive Grant Application/Award? No <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: CDA allocates funding to the County through a formula grant.
County Match?	Yes <input type="checkbox"/> Amount ____ or ____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
The COVID-19 Pandemic took a toll on current senior nutrition service providers. The condition of their kitchen equipment was greatly impacted during the pandemic as meal services increased by 160%. This grant funding will be allocated to OCCR/OCCS's contracted senior nutrition providers and will allow these providers to modernize their kitchens to ensure they have the capacity to increase production in the event of any unforeseen issues in the future. Allowable costs include, but are not limited to, commercial grade equipment such as refrigerators, ovens, stoves, insulated food bags, refrigerated vehicles, dishwashers, tables, and chairs.	
Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	John Cleveland
Recommended Action/Special Instructions <small>(Please specify below)</small>	



CEO-Legislative Affairs Office Grant Authorization eForm

1. Adopt the resolution as approved by County Counsel to receive \$2,129,467 in funds from the California Department of Aging for the Senior Nutrition Infrastructure program.
2. Approve the State Standard Agreement NI-2223-22 with the California Department of Aging in the amount of \$2,129,467 for the term of October 1, 2022 – December 31, 2024.
3. Authorize the OC Community Resources Director or designee to execute the State Standard Agreement NI-2223-22.
4. Authorize the OC Community Resources Director or designee to execute all documents required to accept additional Senior Nutrition Infrastructure program grant award funding up to the maximum annual allocation from the California Department of Aging.

Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Dylan Wright (714) 480-2788 / Dylan.Wright@occr.ocgov.com Renee Ramirez (714) 480-6483 / Renee.Ramirez@occr.ocgov.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Dylan Wright, Director, OC Community Resources	

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
October 18, 2022

WHEREAS, OC Community Resources Office on Aging has received State Standard Agreement NI-2223-22 in the amount of \$2,129,467 from the California Department of Aging; and

WHEREAS, the County of Orange assures that it will abide by the terms and conditions of Agreement NI-2223-22; and

WHEREAS this Board agrees with the terms of the State Standard Agreement and the allocation of funds contained therein.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Approve State Standard Agreement NI-2223-22, with the California Department of Aging in the amount of \$2,129,467 for the term October 1, 2022, through December 31, 2024.
2. Authorize the OC Community Resources Director or designee to execute State Standard Agreement NI-2223-22, with the California Department of Aging in the amount of \$2,129,467 for the term October 1, 2022, through December 31, 2024.
3. Authorize the OC Community Resources Director or designee to execute future Amendments to State Standard Agreement NI-2223-22 to accept additional Senior Nutrition Infrastructure grant award funding for up to the maximum amount allocated by the California Department of Aging.



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / GRANT AWARD

Today's Date:	October 7, 2022
Requesting Agency/Department:	OC Community Resources/OC Community Services
Grant Name and Project Title:	CAREER (Comprehensive and Accessible Reemployment through Equitable Employment Recovery) National Dislocated Worker Grant
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	US Department of Labor, Employment and Training Administration
Application Amount Requested:	\$3,000,000
Application Due Date:	08/31/2021
Board Date when Board Approved this Application:	05/11/2021
Awarded Funding Amount:	\$3,000,000
Notification Date of Funding Award:	September 29, 2021
Is this an Authorized Retroactive Grant Application/Award? <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input type="checkbox"/> Amount ____ or ____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	There is no required match, but OCCS intends to leverage existing WIOA funding to support the program activities.
Will the grant/program create new part or full-time positions?	No permanent positions will be created; the program intends to hire up to 10 extra-help and/or limited term positions to operate the program during the grant term.
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>Orange County's CAREER Dislocated Worker Grant project will assist 600 dislocated workers with finding employment by implementing both technology and direct service delivery components, including but not limited to, providing individualized career services and a virtual career training and guidance platform, that will serve marginalized communities. The project will help move the OC workforce toward high-quality employment opportunities by reaching those areas and populations within the county that have had limited access to services, training, and education opportunities by implementing a robust outreach strategy that will cover all the Board approved threshold languages; that combines print, radio, digital media, and community forums. The program includes providing career, training and education opportunities, such as the development and implementation of a virtual Orange County One-Stop Center using a learning management system and community outreach activities, to support the needs of dislocated workers and meet historically marginalized communities where they are.</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

The Board of Supervisors approved the OC Community Resources Director or designee to accept the \$3,000,000 grant on October 19, 2021, as included on the CEO grants report. This eForm submission is requesting specific Board approval to have authority to spend out grant funds, as required by Auditor-Controller.

Board Resolution Required?

(Please attach document to eForm)

Yes

No

Deputy County Counsel Name:

(Please list the Deputy County Counsel that approved the Resolution)

Recommended Action/Special Instructions

(Please specify below)

Authorize the OC Community Resources Director or designee, to retroactively approve necessary supportive services including but not limited to: linkages to community services; assistance with transportation; assistance with childcare and dependent care; assistance with housing; needs-related payments; assistance with educational testing; reasonable accommodations for individuals with disabilities; legal aid services; referrals to health care; assistance with uniforms or other appropriate work attire and work-related tools; assistance with books, fees, school supplies, and other items for students in post-secondary education; payments and fees for employment and training-related applications, tests and certifications; and expenses associated with a participant's entrepreneurship activities under the CAREER program, effective October 19, 2021.

Authorize the Auditor-Controller to pay the aforementioned expenditures upon approval from the OC Community Resources Director or designee.

Department Contact:

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Dylan Wright (714) 480-2788 / Dylan.Wright@occr.ocgov.com
Renee Ramirez (714) 480-6483 / Renee.Ramirez@occr.ocgov.com

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Dylan Wright, Director, OC Community Resources



**CEO-Legislative Affairs Office
Grant Authorization eForm**

GRANT APPLICATION / **GRANT AWARD**

Today's Date:	October 12, 2022
Requesting Agency/Department:	John Wayne Airport
Grant Name and Project Title:	Bipartisan Infrastructure Law (BIL) Airport Terminal Program (ATP) - Terminal Elevator and Escalator Replacement Phase I
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	Federal Aviation Administration (FAA)
Application Amount Requested:	\$12,000,000
Application Due Date:	October 24, 2022
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Award:	N/A
Is this an Authorized Retroactive Grant Application/Award? <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	This is not a recurring grant
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input checked="" type="checkbox"/> Amount \$2,400,000 (20%) No <input type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	Fund 281 – Airport Construction Fund
Will the grant/program create new part or full-time positions?	The grant will not create new positions.
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
<p>The grant will reimburse costs for the Terminal Elevator and Escalator Replacement Phase I project. The project scope includes the replacement and/or modernization of six escalators in Terminals A and B as they are nearing the end of their service life.</p> <p>The grant will fund eligible costs up to \$9,600,000 (80%). The Airport is required to fund \$2,400,000 (20%), which will be included in the Fund 281 – Airport Construction fund budget.</p>	
Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	
Recommended Action/Special Instructions	



CEO-Legislative Affairs Office Grant Authorization eForm

(Please specify below)	
Authorize the Airport Director, or designee to apply for the BIL ATP Grant with the FAA and execute any forms needed in the application process.	
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Charlene V. Reynolds, Airport Director 949-252-5183, CReynolds@ocair.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Charlene V. Reynolds, Airport Director (949) 252-5183, CReynolds@ocair.com	



CEO-Legislative Affairs Office Grant Authorization eForm

Recommended Action/Special Instructions (Please specify below)	
Authorize the Airport Director, or designee to apply for the BIL ATP Grant with the FAA and execute any forms needed in the application process.	
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Charlene V. Reynolds, Airport Director 949-252-5183, CReynolds@ocair.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Charlene V. Reynolds, Airport Director (949) 252-5183, CReynolds@ocair.com	



Board of Supervisors

Memorandum

October 5, 2022

To: Clerk of the Board
From: Supervisor Lisa Bartlett, 5th District
Subject: Addition to the County Events Calendar

S42A

Please add the following item to the Supplemental Calendar for the October 18, 2022 Board Agenda.

Supervisor Bartlett:

Add to the County Events Calendar the annual Extraordinary Lives Foundation Gala and other mental health & wellness events and make related findings per Government Code Section 26227.

Supervisor Lisa Bartlett

RECEIVED
2022 OCT -5 PM 12:47
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS



MEMORANDUM

To: Clerk of the Board

From: Vice Chairman Donald P. Wagner, Third District

Date: October 10, 2022

RE: Re-appointment of Hardip Passananti to the Assessment Appeals Board No. 2

542B

I would like to reappoint Hardip Passananti to the Assessment Appeals Board No. 2 for a term of September 5, 2022 through August 31, 2025. Please add this as a supplemental item to the Tuesday, October 18, 2022 Board of Supervisors meeting.

RECEIVED
2022 OCT 11 PM 2:11
CLERK OF THE BOARD
COUNTY OF ORANGE
CALIFORNIA



APPLICATION FOR COUNTY OF ORANGE
BOARD, COMMISSION OR COMMITTEE

(FOR COUNTY USE ONLY)

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

**NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP
(SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):**

Assessment & Appeals Board #2

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: First Second Third Fourth Fifth

APPLICANT NAME AND RESIDENCE ADDRESS:

Hardip	Brar	Passananti	
<small>First Name</small>	<small>Middle Name</small>	<small>Last Name</small>	
Irvine		CA	
<small>Street Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>
<small>Home Phone Number</small>		<small>Cell Phone Number</small>	
<small>Email Address</small>			

CURRENT EMPLOYER: _____

OCCUPATION/JOB TITLE: _____

BUSINESS ADDRESS: _____

BUSINESS PHONE NUMBER: _____

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: YES NO

IF NO, NAME OF COUNTRY OF CITIZENSHIP: _____

ARE YOU A REGISTERED VOTER? YES NO

IF YES, NAME COUNTY YOU ARE REGISTERED IN: Orange

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)
Orange County Bar Association	1/2002	Present
Irvine High School PTA	9/2018	Present
Boy Scouts of America	2/2015	Present

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? YES NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? YES NO

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

YES NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

Please see attached

DATE: 10/4/2022

APPLICANTS SIGNATURE:

Hardip B. Passananti

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received: 10/5/22 Received by: Pam Rainey
Deputy Clerk of the Board of Supervisors

Date referred: 10/5/22

To: BOS District 1 BOS District 2 BOS District 3 BOS District 4 BOS District 5

All BOS BCC Contact Person Name Pam Rainey

Hardip Brar Passananti
Appl, Assessment Appeals Board OC
Renewal of Term
October 2022

Within the last five years, have you been affiliated with any business or nonprofit agency(ies)?

Yes, I am a board member for the non-profit organization Be A Hero Become A Donor (BAHBAD). I became a board member in 2012 and am still on the Board of Directors. The mission of the organization is to encourage others to join the bone marrow registry and to be an organ donor.

Please briefly explain why you wish to serve on this board, committee, or commission.

I have completed one term on the Assessment Appeals Board, from 2020 thru September 2022. The primary reason I want to return to serve on the Assessment Appeals Board is to continue my engagement in public service, and to give back to the community. I have enjoyed my time on the Board and serving the community of Orange County and am a fair and honest board member. I moved to Orange County to attend college, and never left. I have been given much thru my education and professional experiences, and now that my children are a little older, I want to continue to give back to the community that has given me so much.

HARDIP BRAR PASSANANTI

PROFILE

Seasoned attorney with over 15 years of law firm experience in litigation, trademark, client counseling, and patent prosecution matters. Practice focus is on client counseling, including trademarks, and resolving infringement disputes in a wide range of technologies and fields.

Litigation experience: Represent plaintiffs and defendants at trial and appellate levels in federal and state court, as well as before the International Trade Commission on patent, trademark, trade dress, copyright, false claims act, trade secret, employment and fraud actions; Represent clients in asbestos litigation, and multi-defendant contract disputes in state court; Manage multiple pro bono matters; Participate in all phases of complex lawsuits, including: Draft invalidity and non-infringement briefs and summary judgment motions; Take and defend depositions; Analyze prior art; draft invalidity and non-infringement charts; Work closely with expert witnesses and help to draft expert reports and declarations.

Representative litigation matters include:

- **Bayer v. Dow AgroSciences (DAS):** Member of team that represented DAS and its affiliates in multiple patent actions involving plant molecular genetics; Manage team of junior associates and paralegals; Work closely with in-house counsel and inventors to understand technology in preparation for Markman hearings and trial; Manage retention of expert witnesses, including identify and interview potential expert witnesses and make recommendations to client; Resolved two of the cases at summary judgment in favor of DAS, and the third case is pending.
- **Union Carbide Corporation:** Represent Union Carbide as a member of the Orrick team acting as National Counsel and California trial counsel in ongoing asbestos-related product liability litigation, which recently obtained a complete defense verdict in a multi-week jury trial.
- **Rainbow Municipal Water District v. Miox Corp.:** Primary attorney defending Miox, a New Mexico company, in a breach of contract case in which the Water District entered into a contract with a third party to install Miox's on-site chlorine generation systems at the District facilities; Manage employee fact interviews to determine timeline of events; Communicate case status and develop case strategy with Miox's general counsel; Coordinate defense with three co-defendants; Prepare and conduct all depositions; Negotiate and draft settlement agreement.
- **Biax Corp. v. Intel Corp.:** Defend Intel Corp. in a patent infringement action brought by a non-practicing entity involving parallel processing; Oversee the licensing and marking defenses, including preparing for licensing and marking depositions; Manage damages experts, including drafting expert reports, preparing damages experts for depositions and trial.
- **Certain L-Lyine feed products (ITC):** Ajinomoto's technology allows the use of *E. coli* with specific genetic mutations to produce lysine thru a fermentation process; Help client file suit in the ITC to prevent a competitor from using and importing Ajinomoto's patented technology; Manage Ajinomoto's expert witness, including drafting expert report; Work closely with and manage senior executives and inventors from Japan while preparing for trial.
- **MGA v. Mattel Inc.:** Member of team that represented MGA in a complex case involving trade secret misappropriation, RICO, breach of contract, trade mark issues, and business torts. After obtaining reversal by the Ninth Circuit of a prior jury verdict that favored Mattel, a second jury trial resulted in a verdict for MGA.
- **Geotag Inc. v. Frontier Communications Corp.:** Represent 30 plus defendants in a consolidated patent infringement action involving approximately 300 defendants in which the underlying technology was an internet system for accessing geographically topically based information; Primary contact between Orrick and each of the 30 plus defendants; Serve as the primary Orrick attorney for the Joint Defense Group, which involved coordinating discovery efforts, *inter alia*, with multiple co-counsel; Manage junior associates and paralegals.

- Power Integrations, Inc. v. Fairchild Semiconductor International, Inc.: Draft summary judgment motions regarding recovering damages prior to filing of complaint and failure to mark products as required by 35 USC 287.
- Sears/Orchard Supply Hardware: Assist in employment litigation involving overtime claims against clients Sears and Orchard Supply Hardware (OSH); Conduct employee interviews on-site; Take depositions.
- Syngenta Seeds, Inc. v. Monsanto and Dow AgroSciences: Represent DAS in multi-patent litigation in Delaware involving genetically modified corn; Manage document review process; Take inventor depositions; DAS prevailed at trial.

Trademark experience: Advise on trademark availability for use and registration; Monitor existing and proposed trademarks; Oversee all procedural details of trademark registration; Conduct and manage pre-filing clearance searches, prosecution, registration, maintenance and renewal; Conduct U.S. opposition and cancellation proceedings; Coordinate and manage international opposition and cancellation proceedings; Draft pleadings and conduct motion and discovery practice in U.S. litigation; Manage cease and desist letters and coordinate follow up efforts; Conduct due diligence investigations.

Representative Trademark matters include:

- El Torito: Manage El Torito restaurant's world-wide trademark portfolio; Manage foreign counsel in Japan, Turkey, Chile, Korea and the Middle East; Work with in-house counsel to brainstorm new marks for drinks; Primary attorney representing El Torito in a Trademark Opposition (El Torito v. Agroindustria Guadalajara) in front of the Trademark Trial and Appeal Board, and led the successful resolution of the opposition.
- The Food Dude: Develop a framework with client to help protect mark; Led opposition to cancellation proceedings at the TTAB; Negotiate and draft coexistence agreement. (*pro bono*)
- Haute Couleur: Develop a framework for trademark protection in the US for a family of trademarks; Strategize about filing in other countries; Strategic oversight of aligning changing corporate goals with IP protection; Negotiate and draft license agreements with strategic partners.
- Neighborhood Entrepreneur Law Project: Work with the New York City Bar Association to advise multiple clients on trademarks for their businesses and products. (*pro bono*)
- Labor Voices, Inc. Coordinate with corporate counsel and inventors on IP strategy, including in which classes to file trademarks to optimize protection.
- Ms. America: Work with client in protecting trademark by identifying improper use of mark; Draft cease and desist letters; File trademark infringement complaint; Negotiate settlement with infringer, including transfer of website. (*pro bono*)
- OperaWorks: In conjunction with Intel's Pro Bono effort, monitor others use of client's mark; Draft cease and desist letters, primarily to universities and other opera houses that were wrongfully using client's mark; Negotiate settlement agreements with multiple infringing users of mark. (*pro bono*)
- Neowiz Internet Inc.: Work with US team of Korean company to secure trademark protection for downloadable game software and electronic games for use on wireless devices.

Client counseling experience: Negotiate and draft license agreements; Negotiate and draft settlement agreements; Draft cease-and-desist letters and responses thereto; Work closely with in-house counsel, including to ensure business goals are aligned with litigation strategies; Evaluate portfolios for potential acquisition; Prepare freedom-to-operate analyses; Prepare infringement and non-infringement opinions; Prepare patentability opinions.

Representative client counseling matters include:

- Brett Sanders: Advise UCI professor on licensing software to simulate flooding to a third party; Negotiate and draft exclusive license agreement.
- Exelixis Plant Sciences: Advise board of directors on potential remedies if they move forward with acquisition of a seed company, including potential monetary damages, likelihood of a preliminary injunction, and likelihood of a seed destruction order; Draft memorandum outlining remedies and present findings to the board of directors.
- Sigma Tau: Assist corporate group in acquisition of a competitor by leading the IP due diligence effort; Review license and development agreement between a US and French corporation; Review world-wide trademark and patent portfolio; Confirm ownership and licensing status of each trademark and patent.

- **Dow AgroSciences:** Negotiate seed and event license agreement between Dow AgroSciences (DAS) and Pioneer, provisions of which include trade secrets; Discuss nature of trade secrets with DAS scientists, marketing and sales staff to ascertain extent of trade secrets.
- **Fraunhofer:** Advise German client on licensing project involving a contractual analysis regarding Fraunhofer's potential liability arising from an adverse arbitration decision; Review and advise client on breach of contract claims by licensees and potentially by licensors; Advise on fraud and misrepresentation claims by licensees.
- **RocketMix:** Advise a UCI startup focusing on online college teaching about general IP strategy and required disclosures to UCI; Develop a framework for a targeted marketing campaign geared towards university professors and students; Negotiate and draft work-for-hire agreements. (*pro bono*)
- **Boehringer-Ingelheim:** Advise general counsel on freedom to operate and licensing of potentially blocking patents.

Prosecution experience: Prepare and prosecute U.S. utility patent applications, U.S. reissue patent applications, PCT patent applications; review invention disclosure statements; work closely with in-house counsel and inventors.

Representative prosecution matters include:

- **Gateway Corp:** draft three patent applications involving computer hardware and software.
- **Genbook, Inc.** draft patent application for an online booking method and system.
- **Agilent, Inc.** draft 3-5 patent applications involving immunoassays and DNA polymerase.

Pro bono experience: Assisted pro bono clients. Notable representations include (in addition to those cited above):

- **Michigan Innocence Project:** Review case screening questionnaires to determine if wrongful criminal convictions were involved; make recommendations for further review.
- **Hurricane Katrina FEMA Assistance:** assist a victim of Hurricane Katrina receive FEMA benefits after his home had been destroyed.
- **Be A Hero Become A Hero Foundation (BAHBAD):** assist a non-profit that promotes donation of bone marrow and organs to incorporate and assist with trademark applications; Serve as Board Member of BAHBAD to encourage others to get on the bone marrow registry.
- **Haiti Immigration:** Assist a US citizen helping out in post-earthquake Haiti obtain a Visa for fiance.
- **UCI Immigration Clinic:** Assist victims of human trafficking, sexual slavery, or domestic abuse apply for permanent residency.
- **UCI Incubators:** Assist UCI faculty with various issues arising with start-up companies, including review consulting agreements, advise on University obligations, draft license agreements, review publishing agreements, negotiate with counsel regarding sale of intellectual property, and advise faculty on various corporate issues.

Criminal Prosecution experience: Try misdemeanor cases from voir dire through sentencing; conduct felony preliminary hearings; prepare and argue various motions and oppositions; Review and analyze police reports and other evidence to file criminal complaints and make sentence recommendations; Interview victims and witnesses involved in pending cases; Negotiate pre-trial case dispositions with defense attorneys.

LEGAL EXPERIENCE

LAW OFFICES OF HARDIP B. PASSANANTI, Irvine, CA
Independent Consultant, October 2017 - Present

ORANGE COUNTY DISTRICT ATTORNEYS OFFICE, Santa Ana, CA
Deputy District Attorney, January 2015 – September 2017

ORRICK, HERRINGTON & SUTCLIFFE, Irvine, CA
Senior Associate, September 2002 – January 2015
Leadership Activities: Successful Women in Intellectual Property, Diversity Committee, Recruiting Committee

LYON & LYON, Costa Mesa, CA
Associate, September 2001 – September 2002

SCIENTIFIC EXPERIENCE

UNIVERSITY OF CALIFORNIA, IRVINE

Graduate Student/Researcher, June 1994 – December 2000

- Investigated the cellular causes of senescence and the effects of nutrition on the aging process
- Identified genes involved in aging at the molecular and biochemical level using Northern Blots
- Differentiated between different population genetic mechanisms of aging
- Managed 40 undergraduate students in the laboratory, and organized lab meetings and training sessions for students
- Presented work to colleagues on a quarterly basis and to the Department on an annual basis

UNIVERSITY OF CALIFORNIA, IRVINE

Undergraduate Researcher, September 1989 – June 1992

- Examined the effects of Superoxide Dismutase (SOD) on longevity and fecundity
- Performed DNA sequencing on selected fruitflies
- Presented research results quarterly to faculty and post-doctoral researchers

TEACHING EXPERIENCE

UNIVERSITY OF CALIFORNIA, IRVINE

Teaching Assistant, April 1995 – March 1998

- Led discussion sections for the following undergraduate courses: Diversity of Life, Ecology, Genetics, Upper division Writing, Biology for non-majors, Ecology for non-majors, Honors Biology.
- Presented three guest lectures.

CALIFORNIA ALLIANCE FOR MINORITY PARTICIPATION (CAMP)

Lecturer, Summers 1995 & 1996

- Taught approximately 50 students in Biology, demonstrated various lab techniques during the laboratory session.

SUMMER RESIDENTIAL PROGRAM (SRP)

Lecturer, Summers 1997 & 1998

- Taught approximately 50 high school and 50 junior high school students how to write scientifically.

EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES, SCHOOL OF LAW

J.D., May 2001

Activities: UCLA Women's Law Journal, Bulletin of Law and Technology

UNIVERSITY OF CALIFORNIA, IRVINE

Ph.D., Biological Sciences, December 2000

Doctoral Thesis: Studies of Postponed Aging in *Drosophila melanogaster*

Awards: Steinhaus Award for Excellence in Teaching, 1997-98, American Foundation of Aging Research (AFAR) scholarship recipient

Activities: Graduate Representative on Prescription Committee; Member: American Association of University Women, Society for the Study of Evolution

UNIVERSITY OF CALIFORNIA, IRVINE

B.S. degree, *honors*, Biological Sciences, June 1992

Honors: Dean's Honor List, Sigma Xi Scientific Research Society, Excellence in Research, California Table Grape Scholar

ADMISSIONS AND LANGUAGES

- California
- U.S. Court of Appeals for the Federal Circuit
- Fluent in Punjabi (East Indian language)

MEMBERSHIP

- Orange County Diversity Task Force (geared towards raising awareness of diversity issues in OC)
- TiE Southern California (entrepreneur organization connecting entrepreneurs with established businesses and funding sources)
- SABA North America and Southern California (South Asian Bar Association)
- OCBA (Orange County Bar Association)

INVITED SPEAKING ENGAGEMENTS

- BayBio, Panelist, Patenting Life Forms, 2005
- Successful Women in IP, Panelist, Sponsored by Orrick, 2006
- The Non-Profit Participation Summit, Panelist, Sponsored by The Greenlining Institute regarding how law firms can invest in minority community development, 2007
- South Asian Bar Association – Southern California, Panelist, Women in the Law, 2008
- Bridgeport Continuing Legal Education, Panelist, Understanding IP Law, 2013
- Bridgeport Continuing Legal Education, Panelist, IP Law for In-House Counsel and Non-IP Attorneys, 2013
- California State Bar's IP Section, Webinar, Panelist, Contractual Issues regarding IP Ownership, Enforcement and Joinder, 2013

PUBLICATIONS

- H. Brar. 1992. The effects of superoxide dismutase on longevity and fecundity in *Drosophila melanogaster*. Journal of Undergraduate Research in the Biological Sciences.
- R. H. Tyler, H. Brar, M. Singh, A. Latorre, J. L. Graves, and L. D. Mueller. The effect of superoxide dismutase alleles on aging in *Drosophila*. *Genetica* 91: 141-149.
- R. Kurapati, H.B. Passananti, M. R. Rose, and J. Tower. 2000. Increased expression of *hsp 22* RNA in *Drosophila* lines selected for increased longevity. *Journal of Gerontology, Biological Sciences* 55A: No. 11, B552-B-559.
- M.R. Rose, H.B. Passananti, and M. Matos, Editors. 2004. *Methuselah Flies: A Case Study in the Evolution of Aging*. World Scientific Publishing, Singapore.
- M.R. Rose, H.B. Passananti, A.K. Chippindale, J.P. Phelan, M. Matos, H. Teotónio, & L.D. Mueller. 2005. The effects of evolution are local: Evidence from experimental evolution in *Drosophila*. *Integrative and Comparative Biology* 45: 486-491.



RECEIVED

2022 OCT 12 AM 10:34

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

MEMORANDUM

To: Clerk of the Board

From: Vice Chairman Donald P. Wagner, Third District

Date: October 12, 2022

RE: Supplemental Item to the October 18, 2022 Board of Supervisors Agenda

S42C

Please add this as a supplemental item to the Tuesday, October 18, 2022 Board of Supervisors meeting:

- Direct County Counsel to request the Orange County Superior Court to open the conservatorship proceedings for defendant Aminadab Gaxiola Gonzalez (Orange County Superior Court Case 21CF0924) to the public and the victims in the March 31, 2021 mass shooting in the City of Orange.

SUMMARY:

An open hearing will allow Orange County prosecutors with detailed knowledge of this crime – one of Orange County’s most heinous in years – to participate on behalf of the public. It will allow victims an opportunity to observe the handling of this high-profile case and, where appropriate in law or the court’s discretion, to have a voice in this important case. Allowing the public and the victims the opportunity to observe the conservatorship proceedings for defendant Aminadab Gaxiola Gonzalez will ensure compliance with California Welfare and Institution Code § 5188(c)(4).

BACKGROUND INFORMATION:

On March 31, 2021, a 911 caller reported a man shooting into a business complex in the City of Orange. Police arrived minutes later to find the gates to the business’ courtyard had been locked with a bicycle cable-type lock, preventing officers from accessing the property. The shooter, later identified as Aminadab Gaxiola Gonzalez, is accused of firing at the two officers, who returned fire. Gaxiola Gonzalez was wounded, having been shot in the head by police.

Officers used bolt cutters to cut the locks and found four people who had been shot to death within the business complex, including a 9-year-old boy. A man and two women were also found dead. A third woman, later identified as the dead child’s mother, was wounded and taken to the hospital in critical condition, having been shot in the head.

On April 2, 2021, defendant Gaxiola Gonzalez was charged with four felony counts of murder, one felony count of attempted murder and two felony counts of attempted murder of a police officer. The charges make Gaxiola Gonzalez eligible for the death penalty.

On November 5, 2021, the Orange County Superior Court suspended criminal proceedings in this case and determined that the defendant was incompetent to stand trial because of the injuries he sustained.

The court ordered the Orange County Public Guardian to initiate conservatorship proceedings for defendant Gaxiola Gonzalez on October 27, 2022. The District Attorney's Office has been informed that County Counsel, on behalf of the Public Guardian, will seek a Murphy Conservatorship pursuant to Welfare and Institutions Code §5008(b)(1)(B). A Murphy Conservator has the authority to involuntarily place a conservatee in a state hospital or psychiatric treatment facility.

Conservatorship proceedings are presumptively nonpublic pursuant to Welfare and Institutions Code §5118. However, the proceedings may be made public in the following circumstances:

(4) A request by any other party to the proceeding to make the hearing public may be granted if the judge, hearing officer, or other person conducting the hearing finds that the public interest in an open hearing clearly outweighs the individual's interest in privacy (Welfare and Institutions Code §5118(c)(4).)

Having this proceeding held publicly would enhance the performance and accuracy of the proceedings, educate the public regarding the proceedings, provide a means by which the community can observe the use of judicial power, thereby increasing public confidence in the courts and the legal process, and enhance the truth-finding function of the proceedings.

County Counsel has the authority to request the Court to allow the public and the victims to observe the proceeding. This is an extraordinary case of special public interest. The victims, their families, the County of Orange and the country have an unusually strong interest here in observing the matter to determine what will happen to defendant Gaxiola Gonzalez in this proceeding as well as the accompanying criminal case.



Continuation or Deletion Request

Date: October 17, 2022
To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Re: ASR Control #: N/A, Meeting Date 10/18/22 Agenda Item No. # S42D
Subject: Approve Contract for Cold Weather Emergency Shelter Services

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com
, c=US
Date: 2022.10.17 09:18:56
-07'00'

Request to continue Agenda Item No. # ____ to the ____ Board Meeting.

Comments:

Request deletion of Agenda Item No. # S42D

Comments:

RECEIVED
2022 OCT 17 AM 9:22
CLERK OF THE BOARD OF SUPERVISORS
ORANGE COUNTY
EMERGENCY SERVICES



County Executive Office

Memorandum

October 12, 2022

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US
 Date: 2022.10.12 14:58:43 -0700

RECEIVED
 2022 OCT 13 PM 12:45
 FRANK KIM
 COUNTY EXECUTIVE OFFICER
 BOARD OF SUPERVISORS

S42D

The County Executive Office is requesting a Supplemental Agenda Staff Report for the October 18, 2022, Board Hearing.

Agency: County Executive Office
Subject: Approve Contract for Cold Weather Emergency Shelter Services
Districts: 2

Reason Item is Supplemental: This ASR is being filed as a Supplemental Item due to delays experienced in identifying a provider for operations of the Cold Weather Shelter Program. This program provides access to emergency shelter and supportive services during the winter months for individuals experiencing homelessness in Orange County.

Justification: Consideration of the Contract for Cold Weather Emergency Shelter Services at the October 18, 2022 Board Hearing will ensure adequate preparation time for the provider to begin services by the December 1, 2022.

Concur:

 Doug Chaffee, Chairman of the Board of Supervisors

cc: Board of Supervisors
 County Executive Office
 County Counsel



SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 10/18/2022

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): 2

SUBMITTING AGENCY/DEPARTMENT: County Executive Office

DEPARTMENT HEAD REVIEW: Frank Kim
Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of Orange, ou=CEO,
 email=frank.kim@ocgov.com, c=US
 Date: 2022.10.18 16:40:30 -0700
 Department Head Signature

DEPARTMENT CONTACT PERSON(S): Doug Becht (714) 834-2323
 Lilly Simmering (714) 834-6234

RECEIVED
 CLERK OF THE BOARD
 ORANGE COUNTY
 DEPARTMENT OF SUPERVISORS
 2022 OCT 18 PM 12:45

Subject: Approve Contract for Cold Weather Emergency Shelter Services

CEO CONCUR

Frank Kim
Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of Orange, ou=CEO,
 email=frank.kim@ocgov.com, c=US
 Date: 2022.10.12 16:40:30 -0700
 CEO Signature

COUNTY COUNSEL REVIEW

Approved Agreement to Form
 Action
Mark Batarse
Digitally signed by Mark Batarse
 DN: cn=Mark Batarse, o=County of Orange, ou=County Counsel, c=US
 Date: 2022.10.18 16:40:30 -0700
 County Counsel Signature

CLERK OF THE BOARD

Discussion
3 Votes Board Majority

Budgeted: Yes **Current Year Cost:** \$900,000 **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** N/A **Sole Source:** Yes

Current Fiscal Year Revenue: N/A

Funding Source: FED: 45% (CDBG, ESG),
 OTHER: 6% (Fund 15U), GF:49% **County Audit in last 3 years** No

Prior Board Action: 11/16/2021 #16, 6/4/2019 #42, 4/24/2018 #55, 5/9/2017 #55

RECOMMENDED ACTION(S)

1. Approve Sole Source Contract with The Salvation Army for provision of Cold Weather Emergency Shelter Services, for a Contract term effective October 18, 2022, through March 31, 2023, in a contract amount not to exceed \$900,000.
2. Authorize the County Procurement Officer or Deputized designee to execute the contract, as referenced in the Recommended Action.

SUMMARY:

Approval of the Sole Source Contract with The Salvation Army will provide Cold Weather Emergency Shelter Services for individuals experiencing homelessness in Orange County who need shelter from inclement weather.

BACKGROUND INFORMATION:

The County of Orange (County) has been working collaboratively with the community since 2007 to provide Cold Weather Emergency Shelter Services (Program) for persons experiencing homelessness in Orange County during the winter months. The Program ensures safe shelter and respite from inclement weather for persons experiencing homelessness that are not otherwise engaged with year-round emergency shelters elsewhere in the County.

Prior Board of Supervisors (Board) Actions:

Board Date	Contract/Amendment	Term	Action
November 16, 2021	Contract	FY 2021-22	Approved as Recommended
June 4, 2019	Contract	FY 2019-20	Approved as Recommended
April 24, 2018	Contract	FY 2018-19	Approved as Recommended
May 9, 2017	Contract	FY 2017-18	Approved as Recommended

The Program operates seasonally and previously accommodated up to 400 individuals at the Fullerton and Santa Ana National Guard Armory locations. However, in response to the COVID-19 pandemic, the operations of the Program were modified during FY 2020-21 and FY 2021-22 to incorporate the appropriate public health services guidelines and changes in resources available. During the FY 2020-21 cold weather season, the California National Guard was ordered to operate under Federal Emergency Management Agency guidelines and the Program was relocated to alternative temporary sites within the City of Fullerton and Santa Ana. During the FY 2021-22 cold weather season, the Office of Care Coordination contracted for the Program provision at the Santa Ana National Guard Armory location with a reduced capacity of 100 beds based on social distancing protocols and did not operate the Fullerton National Guard Armory location given the increased emergency shelter beds capacity created by the Fullerton and Buena Park Navigation Centers. For the FY 2022-23 cold weather season, the Program will operate with a capacity of up to 100 beds given the increased emergency shelter beds capacity in the Central Service Planning Area, including the opening of the Yale Navigation Center and the Carnegie Homeless Shelter.

Scope of Service:

For the FY 2022-23 cold weather season, the Program will be located at 818 E. Third Street, Santa Ana, and have capacity of up to 100 beds, available on a first come, first serve basis each night. The Salvation Army will provide transportation to and from the site and will not allow walk ups to the facility. As the proposed Program Operator, The Salvation Army will foster a safe and healthy environment for program participants. The hours of operation for the Program will be from 5:00 p.m. to 7:00 a.m., providing individuals experiencing homelessness in Orange County with a safe place to sleep, a hot meal, hygiene facilities including showers and restrooms, case management and supportive services, referrals and linkages to community resources and other personal care and housing assistance needs. The Salvation Army will operate the Program in accordance with the County of Orange's Standards of Care for Emergency Shelter Providers and will follow a Good Neighbor Policy that supports the long-term success of the Program.

Program Outcomes:

As the operator of the Program, upon Board approval of the contract The Salvation Army will begin startup preparations and will be expected to achieve performance outcomes from December 1, 2022, to March 30, 2023, as detailed below:

- 120 nights of emergency shelter services

- Refer an average of 30 percent participants to additional emergency shelter or other longer-term housing opportunities
- Complete an average of 30 percent participants' enrollments into the Coordinated Entry System

Additionally, The Salvation Army will collect data in the Homeless Management Information System on the numbers of participants served daily, exited, transitioned into other emergency shelter programs and permanent housing and average length of stay.

The program outcomes for previous cold weather seasons are included below:

Contract Term	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	Total
Number of participants served	2,215	2,183	2,211	664	331	7,604
Number of participants exited to increased housing stability	N/A	158	92	226	87	563
Average length of stay	55 days	48 days	97 days	47 days	67 days	63 days

The recommended Sole Source Contract MA-017-23010366 (Contract) for the Program operations is being submitted for Board approval less than 30 days prior to the start of the Contract as the Office of Care Coordination experienced delays in identifying an appropriate Program Operator to begin Program operations. On July 19, 2022, a Request for Proposals for the Program was issued through the County online bidding system, which resulted in zero respondents. The Office of Care Coordination and the County Procurement Office worked to engage and explore experienced homeless service providers to operate the Program. The Office of Care Coordination also approached the three previous operators of the Program and one additional homeless service provider, as part of these outreach efforts. In a collaborative effort, The Salvation Army was willing to work with the Office of Care Coordination to provide shelter and services for the Program. The Salvation Army provided a similar partnership during the COVID-19 Pandemic, when the Santa Ana Armory location was unavailable, and a Salvation Army location was identified and used for shelter services operated by a previous vendor.

The County Executive Office (CEO) is recommending the Board approve Contract MA-017-23010366 (Contract) with The Salvation Army, for Operator of the Program, following successful negotiations and noting their experience in operating emergency shelter programs in Orange County. Approval of the Contract to be effective October 18, 2022, upon Board action will allow The Salvation Army adequate time to begin the hiring and training process for the Program and begin program operations on December 1, 2022. The Contract does not currently include subcontractors or pass through to other providers. See Attachment C for Contract Summary Form. The Orange County Preference Policy is not applicable to this contract award. The Contractor's performance has been confirmed as satisfactory. Reference checks were completed with the City of Santa Ana, City of Whittier, and the City of Anaheim. CEO has verified there are no concerns that must be addressed with respect to the Contractor's ownership/name, litigation status or conflicts with County interest.

FINANCIAL IMPACT:

The appropriations for this contract were included in the FY 2022-23 Adopted Budget and will be included in the FY 2023-24 Budget Request.

The Contract includes a provision stating the Contract is subject to and contingent upon, applicable budgetary appropriations approved by the Board for each fiscal year during the term of the Contract. If such appropriations are not approved, the Contract may be immediately terminated without penalty to the County.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

- Attachment A - Contract MA-017-23010366 with The Salvation Army
- Attachment B - Contract Summary Form
- Attachment C - Sole Source Form

County of Orange, County Executive Office
Office of Care Coordination

MA-017-23010366

CONTRACT MA-017-23010366 FOR
COLD WEATHER EMERGENCY SHELTER SERVICES
BETWEEN
COUNTY OF ORANGE
AND
THE SALVATION ARMY
OCTOBER 18, 2022 – MARCH 31, 2023

THIS Contract (the “Contract”) entered into this 18th day of October 2022, (effective date), is by and between the County of Orange, a political subdivision of State of California (County), and, The Salvation Army, a California nonprofit corporation, (Contractor). County and Contractor may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Contract shall be administered by County Executive Office or an authorized designee (“Administrator”).

WITNESSETH:

WHEREAS, County wishes to contract with Contractor for Cold Weather Emergency Shelter Services described herein to the residents of Orange County; and

WHEREAS, Contractor is agreeable to the rendering of such services on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, County and Contractor do hereby agree as follows:



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*County of Orange, County Executive Office
Office of Care Coordination*

MA-017-23010366

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*County of Orange, County Executive Office
Office of Care Coordination*

MA-017-23010366

REFERENCED CONTRACT PROVISIONS

Term: October 18, 2022 through March 31, 2023

Maximum Obligation: \$900,000

Basis for Reimbursement: Actual Costs

Payment Method: Arrears

Contractor DUNS Number: 074629460

Contractor's UEI Number: LF19U9DKFQM6

Contractor TAX ID Number: 94-1156347

Notices to County and Contractor:

County: County of Orange/CEO
County Procurement Office
400 West Civic Center, 5th floor
Santa Ana, CA 92701
CEOcarecoordination@ocgov.com

Contractor:
The Salvation Army
ATTN: Divisional Secretary for Business
16941 Keegan Ave.
Carson, CA 90746

The Salvation Army
ATTN: Divisional Secretary for Orange County
10200 Pioneer Rd.
Tustin, CA 92782

***County of Orange, County Executive Office
Office of Care Coordination***

MA-017-23010366

1. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Contract (additional Common Terms and Definitions are included in Paragraph "I" of Attachment A):

A. AB	Assembly Bill
B. AB 109	Assembly Bill 109, 2011 Public Safety Realignment
C. AIDS	Acquired Immune Deficiency Syndrome
D. APR	Annual Performance Report
E. ARRA	American Recovery and Reinvestment Act of 2009
F. BCSH	Business, Consumer Services and Housing Agency
G. BHS	Behavioral Health Services
H. Cal ICH	California Interagency Council on Homelessness
I. CalWORKs	California Work Opportunity and Responsibility for Kids
J. CAP	Corrective Action Plan
K. CCC	California Civil Code
L. CCR	California Code of Regulations
M. CDBG	Community Development Block Grant
N. CDSS	California Department of Social Services
O. CEO	County of Orange County Executive Office
P. CES	Coordinated Entry System
Q. CFDA	Catalog of Federal Domestic Assistance
R. CFR	Code of Federal Regulations
S. CoC	Continuum of Care
T. COI	Certificate of Insurance
U. CPA	Certified Public Accountant
V. CPP	Care Plus Program
W. CSW	Clinical Social Worker
X. DHCS	California Department of Health Care Services
Y. EEOC	Equal Employment Opportunity Commission
Z. ESG	Emergency Solutions Grant
AA. EOC	Equal Opportunity Clause
AB. ES	Emergency Shelter
AC. FTE	Full Time Equivalent
AD. GAAP	Generally Accepted Accounting Principles
AE. HCA	County of Orange Health Care Agency

*County of Orange, County Executive Office
Office of Care Coordination*

MA-017-23010366

AF. HCD	California Department of Housing and Community Development
AG. HCV	Housing Choice Voucher
AH. HHAP	Homeless, Housing, Assistance and Prevention
AI. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
AJ. HIV	Human Immunodeficiency Virus
AK. HMIS	Homeless Management Information System
AL. HOME	HOME Investment Partnership Program
AM. HUD	U.S. Department of Housing and Urban Development
AN. LCSW	Licensed Clinical Social Worker
AO. MH	Mental Health
AP. MHP	Mental Health Plan
AQ. MHSA	Mental Health Services Act
AR. OCCR	Orange County Community Resources
AS. OCR	Federal Office for Civil Rights
AT. OIG	Federal Office of Inspector General
AU. OMB	Federal Office of Management and Budget
AV. OPM	Federal Office of Personnel Management
AW. P&P	Policy and Procedure
AX. PATH	Projects for Assistance in Transition from Homelessness
AY. PC	California Penal Code
AZ. PHI	Protected Health Information
BA. PII	Personally Identifiable Information
BB. PRA	California Public Records Act
BC. PSC	Professional Services Contract System
BD. PSH	Permanent Supportive Housing
BE. RRH.	Rapid Rehousing
BF. SB	Senate Bill
BG. SIR	Self-Insured Retention
BH. SOCDIS	System of Care Data Integration System
BI. SOW	Scope of Work
BJ. SPA	Service Planning Area
BK. SUD	Substance Use Disorder
BL. TAY	Transitional Aged Youth
BM. UOS	Units of Service
BN. USC	United States Code

- BO. VASH Veterans Affairs Supportive Housing
- BP. WIC Women, Infants and Children
- BQ. YAB Youth Advisory Board

2. ALTERATION OF TERMS

- A. This Contract, together with Attachment A attached hereto and incorporated herein, fully expresses the complete understanding of County and Contractor with respect to the subject matter of this Contract.
- B. Unless otherwise expressly stated in this Contract, no addition to, or alteration of the terms of this Contract or any Attachments/Exhibits, whether written or verbal, made by the Parties, their officers, employees or agents shall be valid unless made in the form of a written amendment to this Contract, which has been formally approved and executed by both Parties.

3. ASSIGNMENT OF DEBTS

Unless this Contract is followed without interruption by another Contract between the Parties hereto for the same services and substantially the same scope, at the termination of this Contract, Contractor shall assign to County any debts owing to Contractor by or on behalf of persons receiving services pursuant to this Contract. Contractor shall immediately notify by mail each of the respective Parties, specifying the date of assignment, the County of Orange as assignee, and the address to which payments are to be sent. Payments received by Contractor from or on behalf of said persons, shall be immediately given to County.

4. CONFIDENTIALITY

- A. Contractor shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, as they now exist or may hereafter be amended or changed.
- B. Prior to providing any services pursuant to this Contract, all members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns of the Contractor shall agree, in writing, with Contractor to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services. This Contract shall specify that it is effective irrespective of all subsequent resignations or terminations of Contractor members of the Board of Directors or its designee or authorized agent, employees,

consultants, subcontractors, volunteers and interns.

5. CONFLICT OF INTEREST

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to Contractor, this obligation shall apply to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

6. COST REPORT

A. Contractor shall submit a Cost Report to County no later than ninety (90) calendar days following termination of this Contract. Contractor shall prepare the Cost Report in accordance with all applicable federal, state and County requirements, GAAP and the Special Provisions Paragraph of this Contract. Contractor shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by Contractor, and available at any time to Administrator upon reasonable notice.

1. If Contractor fails to submit an accurate and complete Cost Report within the time period specified above, Administrator shall have sole discretion to impose one or both of the following:

a) Contractor may be assessed a late penalty of five-hundred dollars (\$500) for each business day after the above specified due date that the accurate and complete Cost Report is not submitted. Imposition of the late penalty shall be at the sole discretion of the Administrator. The late penalty shall be assessed separately on each outstanding Cost Report due County by Contractor.

b) Administrator may withhold or delay any or all payments due Contractor pursuant to any or all Contracts between County and Contractor until such time that the accurate and complete Cost Report is delivered to Administrator.

2. Contractor may request, in advance and in writing, an extension of the due date of the Cost Report setting forth good cause for justification of the request.

Approval of such requests shall be at the sole discretion of Administrator and shall not be unreasonably denied.

3. In the event that Contractor does not submit an accurate and complete Cost Report within one hundred and eighty (180) calendar days following the termination of this Contract, and Contractor has not entered into a subsequent or new Contract for any other services with County, then all amounts paid to Contractor by County during the term of the Contract shall be immediately reimbursed to County.
- B. The Cost Report shall be the final financial and statistical report submitted by Contractor to County, and shall serve as the basis for final settlement to Contractor. Contractor shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if any.
 - C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed County's Maximum Obligation as set forth in the Referenced Contract Provisions of this Contract. Contractor shall not claim expenditures to County which are not reimbursable pursuant to applicable federal, state and County laws, regulations and requirements. Any payment made by County to Contractor, which is subsequently determined to have been for a non-reimbursable expenditure or service, shall be repaid by Contractor to County in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the Cost Report or County may elect to reduce any amount owed Contractor by an amount not to exceed the reimbursement due County.
 - D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, less applicable revenues and late penalty, are lower than the aggregate of interim monthly payments to Contractor, Contractor shall remit the difference to County. Such reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the Cost Report. If such reimbursement is not made by Contractor within thirty (30) calendar days after submission of the Cost Report, County may, in addition to any other remedies, reduce any amount owed Contractor by an amount not to exceed the reimbursement due County.
 - E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, less applicable revenues and late penalty, are higher than the aggregate of interim monthly payments to Contractor, County shall pay Contractor the difference, provided such payment does not exceed the Maximum Obligation of

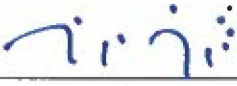
County of Orange, County Executive Office
Office of Care Coordination

MA-017-23010366

County.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and supporting documentation prepared by _____ for the cost report period beginning _____ and ending _____ and that, to the best of my knowledge and belief, costs reimbursed through this Contract are reasonable and allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of (provider name) in accordance with applicable instructions, except as noted. I also hereby certify that I have the authority to execute the accompanying Cost Report.

Signed	
Name	<u>MICHAEL ZIELINSKI</u>
Title	<u>ASSISTANT TREASURER</u>
Date	<u>OCT 06 2022</u> "

7. DEBARMENT AND SUSPENSION CERTIFICATION

A. Contractor certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9,

Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.
- B. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

8. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

- A. Contractor may not delegate the obligations hereunder, either in whole or in part, without prior written consent of County. Contractor shall provide written notification of Contractor's intent to delegate the obligations hereunder, either in whole or part, to Administrator not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.
- B. Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County. Contractor may not assign the rights hereunder, either in whole or in part, without the prior written consent of County.
 1. If Contractor is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of Contractor, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph, unless Contractor is transitioning from a community clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.
 2. If Contractor is a for-profit organization, any change in the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of Contractor, change to another corporate

- structure, including a change to a sole proprietorship, or a change in fifty percent (50%) or more of Board of Directors or any governing body of Contractor at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or delegation in derogation of this subparagraph shall be void.
3. If Contractor is a governmental organization, any change to another structure, including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of this subparagraph shall be void.
 4. Whether Contractor is a nonprofit, for-profit, or a governmental organization, Contractor shall provide written notification of Contractor's intent to assign the obligations hereunder, either in whole or part, to Administrator not less than sixty (60) calendar days prior to the effective date of the assignment.
 5. Whether Contractor is a nonprofit, for-profit, or a governmental organization, Contractor shall provide written notification within thirty (30) calendar days to Administrator when there is change of less than fifty percent (50%) of Board of Directors or any governing body of Contractor at one time.
 6. County reserves the right to immediately terminate the Contract in the event County determines, in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to County for the provision of services under the Contract.
- C. Contractor's obligations undertaken pursuant to this Contract may be carried out by means of subcontracts, provided such subcontractors are approved in advance by Administrator, meet the requirements of this Contract as they relate to the service or activity under subcontract, include any provisions that Administrator may require, and are authorized in writing by Administrator prior to the beginning of service delivery.
1. After approval of the subcontractor, Administrator may revoke the approval of the subcontractor upon five (5) calendar days' written notice to Contractor if the subcontractor subsequently fails to meet the requirements of this Contract or any provisions that Administrator has required. Administrator may disallow subcontractor expenses reported by Contractor.
 2. No subcontract shall terminate or alter the responsibilities of Contractor to County pursuant to this Contract.
 3. Administrator may disallow, from payments otherwise due Contractor,

amounts claimed for subcontracts not approved in accordance with this paragraph.

4. This provision shall not be applicable to service Contracts usually and customarily entered into by Contractor to obtain or arrange for supplies, technical support, and professional services provided by consultants.
- D. Contractor shall notify County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor is also obligated to notify County in writing if the Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

9. DISPUTE RESOLUTION

- A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor and the Administrator, such matter shall be brought to the attention of the County Purchasing Agency by way of the following process:
1. Contractor shall submit to the County Purchasing Agency a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 2. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized representative indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to proceed diligently with the performance of services secured via this Contract, including the delivery of goods and/or provision of services.

Contractor's failure to proceed diligently shall be considered a material breach of this Contract.

- C. Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by a County Deputy Purchasing Agent or designee. If County fails to render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions.
- D. This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

10. EMPLOYEE ELIGIBILITY VERIFICATION

Contractor attests that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Contract meet the citizenship or alien status requirements set forth in federal statutes and regulations. Contractor shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

11. EQUIPMENT

- A. Unless otherwise specified in writing by Administrator, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by Administrator to assist in performing the services described in this Contract. "Relatively Permanent" is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may

- contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated according to GAAP.
- B. Contractor shall obtain Administrator's written approval prior to purchase of any Equipment with funds paid pursuant to this Contract. Upon delivery of Equipment, Contractor shall forward to Administrator, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. Contractor shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.
- C. Upon Administrator's prior written approval, Contractor may expense to County the cost of the approved Equipment purchased by Contractor. To "expense," in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with County.
- D. Contractor shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Contract, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by Administrator, and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.
- E. Contractor shall cooperate with Administrator in conducting periodic physical inventories of all Equipment. Upon demand by Administrator, Contractor shall return any or all Equipment to County.
- F. Contractor must report any loss or theft of Equipment in accordance with the procedure approved by Administrator and the Notices Paragraph of this Contract. In addition, Contractor must complete and submit to Administrator a notification form when items of Equipment are moved from one location to another or returned to County as surplus.
- G. Unless this Contract is followed without interruption by another Contract between the Parties for substantially the same type and scope of services, at the termination of this Contract for any cause, Contractor shall return to County all Equipment purchased with funds paid through this Contract.
- H. Contractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of County Equipment.

12. EXPENDITURE AND REVENUE REPORT

- A. No later than forty-five (45) calendar days following termination of each period or fiscal year of this Contract, Contractor shall submit to Administrator, for informational purposes only, an Expenditure and Revenue Report for the preceding fiscal year, or portion thereof. Such report shall be prepared in accordance with the procedure that is provided by Administrator and GAAP.
- B. Contractor may be required to submit periodic Expenditure and Revenue Reports throughout the term of this Contract.

13. FACILITIES, PAYMENTS AND SERVICES

- A. Contractor agrees to provide the services, staffing, facilities, and supplies in accordance with this Contract. County shall compensate, and authorize, when applicable, said services. Contractor shall operate continuously throughout the term of this Contract with at least the minimum number and type of staff which meet applicable federal and state requirements, and which are necessary for the provision of the services hereunder.
- B. In the event that Contractor is unable to provide the services, staffing, facilities, or supplies as required, Administrator may, at its sole discretion, reduce the Total Maximum Obligation for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount proportionate to the number of days in which Contractor was determined to be unable to provide services, staffing, facilities or supplies.

14. INDEMNIFICATION

Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

15. INSURANCE

- A. Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.
- B. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
- C. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:
1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
 2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.
- D. If Contractor fails to maintain insurance acceptable to the County for the full term of

this Contract, the County may terminate this Contract.

E. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).
2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

F. The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	
(8 or more passengers)	\$5,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims -made
Sexual Misconduct Liability	\$1,000,000 per occurrence

G. Required Coverage Forms

1. The Commercial General Liability coverage shall be written on ISO form CG

00 01, or a substitute form providing liability coverage at least as broad.

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

H. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:
 - a) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the COI:
 - a) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
 - b) A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- I. All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.
- J. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
- K. The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.
- L. Contractor shall notify County in writing within thirty (30) days of any policy

- cancellation and within ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation shall constitute a breach of Contractor's obligation hereunder and ground for County to suspend or terminate this Contract.
- M. If Contractor's Network Security & Privacy Liability is a "Claims-Made" policy, Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.
- N. The Commercial General Liability policy shall contain a "severability of interests" clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).
- O. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
- P. If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
- Q. County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
- R. County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificate of Insurance and endorsements with County incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.
- S. The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.
- T. Submission of Insurance Documents
1. The COI and endorsements shall be provided to County as follows:
 - a) Prior to the start date of this Contract.
 - b) No later than the expiration date for each policy.
 - c) Within thirty (30) calendar days upon receipt of written notice by County regarding changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.
 2. The COI and endorsements shall be provided to the County at the address as

specified in the Referenced Contract Provisions of this Contract.

3. If Contractor fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Contract by the above specified due dates, Administrator shall have sole discretion to impose one or both of the following:
 - a) Administrator may withhold or delay any or all payments due Contractor pursuant to any and all Contracts between County and Contractor until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to Administrator.
 - b) Contractor may be assessed a penalty of one hundred dollars (\$100) for each late COI or endorsement for each business day, pursuant to any and all Contracts between County and Contractor, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to Administrator.
 - c) If Contractor is assessed a late penalty, the amount shall be deducted from Contractor's monthly invoice.
4. In no cases shall assurances by Contractor, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. County will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

16. INSPECTIONS AND AUDITS

- A. Administrator, any authorized representative of County, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall to the extent permissible under applicable law have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and Client records, of Contractor that are directly pertinent to this Contract, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in which they are provided.
- B. Contractor shall actively participate and cooperate with any person specified in Subparagraph A above in any evaluation or monitoring of the services provided

pursuant to this Contract, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.

C. Audit Response

1. Following an audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Contract, County may terminate this Contract as provided for in the Termination Paragraph or direct Contractor to immediately implement appropriate corrective action. A CAP shall be submitted to Administrator in writing within thirty (30) calendar days after receiving notice from Administrator.
2. If the audit reveals that money is payable from one Party to the other, that is, reimbursement by Contractor to County, or payment of sums due from County to Contractor, said funds shall be due and payable from one Party to the other within sixty (60) calendar days of receipt of the audit results. If reimbursement is due from Contractor to County, and such reimbursement is not received within said sixty (60) calendar days, County may, in addition to any other remedies provided by law, reduce any amount owed Contractor by an amount not to exceed the reimbursement due County.

D. Contractor shall retain a licensed certified public accountant, who will prepare and file with Administrator, an annual, independent, organization-wide audit of related expenditures as may be required during the term of this Contract.

E. Contractor shall forward to Administrator a copy of any audit report within fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of Contractor's operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Contract.

17. LICENSES AND LAWS

A. Contractor, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, County, and all other applicable governmental agencies.

B. Enforcement Of Child Support Obligations

1. Contractor certifies it is in full compliance with all applicable federal and State reporting requirements regarding its employees and with all lawfully served Wage

and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

2. Contractor agrees to furnish to Administrator within thirty (30) calendar days of the award of this Contract:
 - a) In the case of an individual Contractor, his/her name, date of birth, social security number, and residence address; and
 - 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 (10%) or more in the contracting entity.
3. It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, or as permitted by federal and/or state statute.

18. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

- A. County owns all rights to the name, logos, and symbols of County. The use and/or reproduction of County's name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without County's prior written consent is expressly prohibited.
- B. Contractor may develop and publish information related to this Contract where all of the following conditions are satisfied:
 1. Administrator provides its written approval of the content and publication of the information at least 30 days prior to Contractor publishing the information, unless a difference timeframe for approval is agreed upon by the Administrator;
 2. Unless directed otherwise by Administrator, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal government funds [funds identified as applicable];
 3. The information does not give the appearance that the County, its officers, employees, or agencies endorse:
 - a) any commercial product or service; and,
 - b) any product or service provided by Contractor, unless approved in writing by Administrator; and,
 4. If Contractor uses social media (such as Facebook, Twitter, YouTube or other

publicly available social media sites) to publish information related to this Contract, Contractor shall develop social media policies and procedures and have them available to Administrator. Contractor shall comply with County Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. The policy is available on the Internet at <http://www.ocgov.com/gov/ceo/cio/govpolicies>.

19. MAXIMUM OBLIGATION

- A. The Total Maximum Obligation of County for services provided in accordance with this Contract, and the separate Maximum Obligations for each period under this Contract, are as specified in the Referenced Contract Provisions of this Contract, except as allowed for in Subparagraph B. below.
- B. Administrator may amend the Maximum Obligation by an amount not to exceed ten percent (10%) of Period One funding for this Contract.

20. MINIMUM WAGE LAWS

- A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, Contractor shall pay no less than the greater of the federal or California Minimum Wage to all its Covered Individuals (as defined within the "Compliance" paragraph of this Contract) that directly or indirectly provide services pursuant to this Contract, in any manner whatsoever. Contractor shall require and verify that all of its Covered Individuals providing services pursuant to this Contract be paid no less than the greater of the federal or California Minimum Wage.
- B. Contractor shall comply and verify that its Covered Individuals comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Contract.
- C. Notwithstanding the minimum wage requirements provided for in this clause, Contractor, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

21. NONDISCRIMINATION

- A. Employment
 - 1. During the term of this Contract, Contractor and its Covered Individuals (as

defined in the "Compliance" paragraph of this Contract) shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Contract, Contractor and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. Contractor and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
3. Contractor shall not discriminate between employees with spouses and employees with domestic partners, or discriminate between domestic partners and spouses of those employees, in the provision of benefits.
4. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices from Administrator and/or the United States Equal Employment Opportunity Commission setting forth the provisions of the EOC.
5. All solicitations or advertisements for employees placed by or on behalf of Contractor and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.
6. Each labor union or representative of workers with which Contractor and/or subcontractor has a collective bargaining Contract or other contract or understanding must post a notice advising the labor union or workers' representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

- B. Services, Benefits And Facilities – Contractor and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, discrimination includes, but is not limited to the following based on one or more of the factors identified above:
1. Denying a Client or potential Client any service, benefit, or accommodation.
 2. Providing any service or benefit to a Client which is different or is provided in a different manner or at a different time from that provided to other Clients.
 3. Restricting a Client in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service and/or benefit.
 4. Treating a Client differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service and/or benefit.
 5. Assignment of times or places for the provision of services.
- C. Limitation on Use of County Funds – All funds derived from County under this Contract shall be used for the content-neutral Program and services set forth herein. Contractor shall not expend any funds derived under this Contract from County on any expenditure related to religious messaging, including, but not limited to, any religious pamphlets or decorative items, or for any other religious programming or services provided by Contractor.
- D. Complaint Process – Contractor shall establish procedures for advising all Clients through a written statement that Contractor’s and/or subcontractor’s Clients may file all complaints alleging discrimination in the delivery of services with Contractor, subcontractor, and Administrator.
1. Whenever possible, problems shall be resolved informally and at the point of service. Contractor shall establish an internal informal problem resolution process

- for Clients not able to resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with Contractor either orally or in writing.
2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.
- E. Persons With Disabilities – Contractor and/or subcontractor agree to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities, and if applicable, as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.
- F. Retaliation – Neither Contractor nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.
- G. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this Contract may be canceled, terminated or suspended in whole or in part and Contractor or subcontractor may be declared ineligible for further contracts involving federal, state or County funds.

22. NOTICES

- A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Contract shall be effective:
1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by Administrator;
 2. When faxed, transmission confirmed;
 3. When sent by Email; or
 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.
- B. Termination Notices shall be addressed as specified in the Referenced Contract

Provisions of this Contract or as otherwise directed by Administrator and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

- C. Contractor shall notify Administrator, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose County to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any County property in possession of Contractor.
- D. For purposes of this Contract, any notice to be provided by County may be given by Administrator.

23. NOTIFICATION OF DEATH

- A. Upon becoming aware of the death of any person served pursuant to this Contract, Contractor shall immediately notify Administrator.
- B. All Notifications of Death provided to Administrator by Contractor shall contain the name of the deceased, the date and time of death, the nature and circumstances of the death, and the name(s) of Contractor's officers or employees with knowledge of the incident.
 - 1. Telephone Notification – Contractor shall notify Administrator by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Contract; notice need only be given during normal business hours.
 - 2. Written Notification
 - a) Non-Terminal Illness – Contractor shall hand deliver, fax, and/or send via encrypted email to Administrator a written report within sixteen (16) hours after becoming aware of the death due to non-terminal illness of any person served pursuant to this Contract.
 - b) Terminal Illness – Contractor shall notify Administrator by written report hand delivered, faxed, sent via encrypted email, within forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to this Contract.
 - c) When notification via encrypted email is not possible or practical Contractor may hand deliver or fax to a known number said notification.
- C. If there are any questions regarding the cause of death of any person served pursuant to this Contract who was diagnosed with a terminal illness, or if there are any unusual

circumstances related to the death, Contractor shall immediately notify Administrator in accordance with this Notification of Death Paragraph.

24. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

- A. Contractor shall notify Administrator of any public event or meeting funded in whole or in part by the County, except for those events or meetings that are intended solely to serve Clients or occur in the normal course of business.
- B. Contractor shall notify Administrator at least thirty (30) business days in advance of any applicable public event or meeting. The notification must include the date, time, duration, location and purpose of the public event or meeting. Any promotional materials or event related flyers must be approved by Administrator prior to distribution.

25. RECORDS MANAGEMENT AND MAINTENANCE

- A. Contractor, its officers, agents, employees and subcontractors shall, throughout the term of this Contract, prepare, maintain and manage records appropriate to the services provided and in accordance with this Contract and all applicable requirements.
 - 1. Contractor shall maintain records that are adequate to substantiate the services for which claims are submitted for reimbursement under this Contract and the charges thereto. Such records shall include, but not be limited to, individual patient charts and utilization review records.
- B. Contractor shall implement and maintain administrative, technical and physical safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of PHI in violation of the HIPAA, federal and state regulations. Contractor shall mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal or state regulations and/or County policies.
- C. Contractor's participant, client, and/or patient records shall be maintained in a secure manner. Contractor shall maintain participant, client, and/or patient records and must establish and implement written record management procedures.
- D. Contractor shall retain all financial records for a minimum of ten (10) years from the termination of the contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.
- E. Contractor shall retain all client and/or patient medical records for ten (10) years following discharge of the participant, client and/or patient.

- F. Contractor shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange. If Contractor is unable to meet the record location criteria above, Administrator may provide written approval to Contractor to maintain records in a single location, identified by Contractor.
- G. Contractor shall notify Administrator of any PRA requests related to, or arising out of, this Contract, within forty-eight (48) hours. Contractor shall provide Administrator all information that is requested by the PRA request.
- H. Contractor may retain client, and/or patient documentation electronically in accordance with the terms of this Contract and common business practices. If documentation is retained electronically, Contractor shall, in the event of an audit or site visit:
1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit or site visit.
 2. Provide auditor or other authorized individuals access to documents via a computer terminal.
 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if requested.
- I. Contractor shall ensure compliance with requirements pertaining to the privacy and security of PII and/or PHI. Contractor shall, upon discovery of a Breach of privacy and/or security of PII and/or PHI by Contractor, notify federal and/or state authorities as required by law or regulation, and copy Administrator on such notifications.
- J. Contractor may be required to pay any costs associated with a Breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification. Contractor shall pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.

26. RESEARCH AND PUBLICATION

Contractor shall not utilize information and/or data received from County, or arising out of, or developed, as a result of this Contract for the purpose of personal or professional research, or for publication.

27. REVENUE

- A. Client Fees – Contractor shall charge a fee to Clients to whom services are provided pursuant to this Contract, their estates and responsible relatives, in accordance with the fee system designated by Administrator. This fee shall be based upon the person's

- ability to pay for services, but it shall not exceed the actual cost of services provided. No person shall be denied services because of an inability to pay.
- B. Third-Party Revenue – Contractor shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Contract may be eligible. Charges to insurance carriers shall be on the basis of Contractor’s usual and customary charges.
- C. Procedures – Contractor shall maintain internal financial controls which adequately ensure proper billing and collection procedures. Contractor’s procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts. Contractor shall provide Administrator, monthly, a written report specifying the current status of fees which are billed, collected, transferred to a collection agency, or deemed by Contractor to be uncollectible.

28. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Contract or application thereof to any person or circumstances to be invalid or if any provision of this Contract contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Contract or the application thereof shall remain valid, and the remaining provisions of this Contract shall remain in full force and effect, and to that extent the provisions of this Contract are severable.

29. SPECIAL PROVISIONS

- A. Contractor shall not use the funds provided by means of this Contract for the following purposes:
1. Making cash payments to intended recipients of services through this Contract.
 2. Lobbying any governmental agency or official. Contractor shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
 3. Fundraising.
 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for Contractor’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body.
 5. Reimbursement of Contractor’s members of the Board of Directors or governing body for expenses or services.
 6. Making personal loans to Contractor’s staff, volunteers, interns, consultants,

- subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to Contractor's staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
 8. Severance pay for separating employees.
 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
- B. Unless otherwise specified in advance and in writing by Administrator, Contractor shall not use the funds provided by means of this Contract for the following purposes:
1. Funding travel or training (excluding staff mileage or parking, or participant transportation).
 2. Making phone calls outside of the local area unless documented to be directly for the purpose of Client care.
 3. Payment for grant writing, consultants, certified public accounting, or legal services.
 4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Contract.

30. STATUS OF CONTRACTOR

Contractor is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract. Contractor is entirely responsible for compensating staff, subcontractors, and consultants employed by Contractor. This Contract shall not be construed as creating the relationship of employer and employee, or principal and agent, between County and Contractor or any of Contractor's employees, agents, consultants, volunteers, interns, or subcontractors. Contractor assumes exclusively the responsibility for the acts of its employees, agents, consultants, volunteers, interns, or subcontractors as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents, employees, consultants, volunteers, interns, or subcontractors, shall not be entitled to any rights or privileges of County's employees and shall not be considered in any manner to be County's employees.

31. TAX LIABILITY

Contractor shall report all income and pay all applicable federal, state, and local income taxes or similar levies as a result of any monies paid Contractor pursuant to this Contract. Contractor shall indemnify, defend and hold County harmless from all liability, claims, losses, demands, including defense costs and attorney fees, whether resulting from court action or otherwise, in the event that any taxing authority or other agency attempts to obtain from County any such monies, penalties, and/or interest imposed resulting from any failure of Contractor to comply with the provisions of this paragraph.

32. TERM

- A. The term of this Contract shall commence as specified in the Referenced Contract Provisions of this Contract or the execution date, whichever is later. This Contract shall terminate as specified in the Referenced Contract Provisions of this Contract unless otherwise sooner terminated as provided in this Contract. Contractor shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting, and accounting.
- B. Any administrative duty or obligation to be performed pursuant to this Contract on a weekend or holiday may be performed on the next regular business day.

33. TERMINATION

- A. Contractor shall be responsible for meeting all programmatic and administrative contracted objectives and requirements as indicated in this Contract. Contractor shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe as determined by Administrator notice, payments may be reduced or withheld until CAP is resolved and/or the Contract could be terminated.
- B. County may terminate this Contract immediately, upon written notice, on the occurrence of any of the following events:
 - 1. The loss by Contractor of legal capacity.
 - 2. Cessation of services.
 - 3. The delegation or assignment of Contractor's services, operation or administration to another entity without the prior written consent of County.
 - 4. The neglect by any physician or licensed person employed by Contractor of any

duty required pursuant to this Contract.

5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this Contract.
6. The continued incapacity of any physician or licensed person to perform duties required pursuant to this Contract.
7. Unethical conduct or malpractice by any physician or licensed person providing services pursuant to this Contract; provided, however, County may waive this option if Contractor removes such physician or licensed person from serving persons treated or assisted pursuant to this Contract.
8. Any breach of Contract, or any misrepresentation or fraud on the part of the Contractor.

C. Contingent Funding

1. Any obligation of County under this Contract is contingent upon the following:
 - a) The continued availability of federal, state and county funds for reimbursement of County's expenditures, and
 - b) Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Board of Supervisors.
2. In the event such funding is subsequently reduced or terminated, County may suspend, terminate or renegotiate this Contract upon thirty (30) calendar days' written notice given Contractor. If County elects to renegotiate this Contract due to reduced or terminated funding, Contractor shall not be obligated to accept the renegotiated terms.

D. In the event this Contract is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Contract, Administrator may, at its sole discretion, reduce the Not To Exceed Amount of this Contract to be consistent with the reduced term of the Contract.

E. In the event this Contract is terminated Contractor shall do the following:

1. Comply with termination instructions provided by Administrator in a manner which is consistent with recognized standards of quality care and prudent business practice.
2. Obtain immediate clarification from Administrator of any unsettled issues of contract performance during the remaining contract term.
3. Until the date of termination, continue to provide the same level of service required by this Contract.
4. If Clients are to be transferred to another facility for services, furnish Administrator, upon request, all Client information and records deemed necessary

- by Administrator to effect an orderly transfer.
5. Assist Administrator in effecting the transfer of Clients in a manner consistent with Client's best interests.
 6. If records are to be transferred to County, pack and label such records in accordance with directions provided by Administrator.
 7. Return to County, in the manner indicated by Administrator, any equipment and supplies purchased with funds provided by County.
 8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, Contractor shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of Administrator.
 9. Provide written notice of termination of services to each Client being served under this Contract, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of termination of services must also be provided to Administrator within the fifteen (15) calendar day period.
- F. County may terminate this Contract, without cause, upon thirty (30) calendar days' written notice. The rights and remedies of County provided in this Termination Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

34. THIRD PARTY BENEFICIARY

Neither Party hereto intends that this Contract shall create rights hereunder in third parties including, but not limited to, any subcontractors or any Clients provided services pursuant to this Contract.

35. WAIVER OF DEFAULT OR BREACH

Waiver by County of any default by Contractor shall not be considered a waiver of any subsequent default. Waiver by County of any breach by Contractor of any provision of this Contract shall not be considered a waiver of any subsequent breach. Waiver by County of any default or any breach by Contractor shall not be considered a modification of the terms of this Contract.

County of Orange, County Executive Office
Office of Care Coordination

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Contract, in the County of Orange, State of California.

BY: _____  _____ DATED: OCT 06 2022

TITLE: MICHAEL ZIELINSKI
ASSISTANT TREASURER

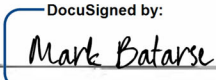
BY: _____ DATED: _____

TITLE: _____

COUNTY OF ORANGE, a political subdivision of the State of California

BY: _____ DATED: _____
Deputy Purchasing Agent

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

BY: MARK BATARSE  _____ DATED: 10/6/2022
Deputy BC5CA9BED31F40A...

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

ATTACHMENT A

I. COMMON TERMS AND DEFINITIONS

A. The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Contract.

1. Access Point means the point of entry into the Coordinated Entry System for households experiencing homelessness or at-risk of homelessness.

2. Admission means documentation, by Contractor, of completion of the entry and program enrollment into the Homeless Management Information System or comparable database.

3. Care Plus Program (CPP) means a comprehensive approach to service delivery for Orange County's most vulnerable Participants. It offers enhanced care coordination, aiming to expedite supportive service linkages quickly and efficiently, by connecting Participants to the most appropriate services and resources across behavioral health, corrections, healthcare, housing and homelessness, and benefits and supportive services.

4. Case Management means a process of identification, assessment of need, planning coordination and linking, monitoring and continuous evaluation of Participants and of available resources in order to achieve and maintain housing stability.

5. Client or Participant means an individual, referred by County or enrolled in Contractor's program for services under the Contract, who are experiencing homelessness.

6. CES means Coordinated Entry System and refers to the mechanism for allocating available housing units into a systematic resource targeting process designed to implement localized priorities for program Participants. The Coordinated Entry System covers the geographic area of Orange County and is regionally focused by Service Planning Areas, is easily accessed by individuals and families seeking housing and services, and includes a comprehensive and standardized process used by all service providers in the Orange County System of Care.

7. CES Community Queue means a list of eligible Participants generated from a standardized assessment. The CES Community Queue is used to refer households to shelter and permanent housing programs, including rapid rehousing and permanent supportive housing, in Orange County.

8. CoC means Continuum of Care, a regional or local planning body that coordinates housing and services funding for homeless families and individuals. The Continuum of Care strategizes the community plan to organize and deliver housing and services to meet the specific needs of people who are experiencing homelessness as they move to stable housing and maximize self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.

9. County of Orange Standards of Care for Emergency Shelter Providers (Standards of Care), which are included in a document attached hereto as “Exhibit 1” and is hereby incorporated by reference, are a comprehensive set of administrative, operational and facility-based standards designed to support the quality and consistency of program operations, evidenced-based participant services, core organizational and administrative functions, and facility design and operations.

10. Cultural Competency means consideration for cultural and linguistic factors in addressing the needs of populations to be served. Subpopulation identities may include, but are not limited to, race and ethnicity, gender and gender identity, sexual orientation, economic class, age, family status, language spoken and understood, physical and mental disabilities, living situation, etc. The Program must have the capacity to accommodate special populations within the general population (i.e., youth, LGBTQIA, Participants with disabilities, veterans, victims of domestic violence) throughout all levels of the organization, from organizational vision and mission statement to policy implementation, and to service delivery procedures and philosophies.

11. Data Collection System means software designed for collection, tracking and reporting outcomes data for Participants enrolled in the Homeless Service Programs. The primary data collection system utilized is the Homeless Management Information System; however, victim service providers utilize comparable Data Collection Systems.

12. Engagement means the process by which a trusting relationship between worker and Participant(s) is established with the goal to link the Participant (s) to the appropriate services, including street outreach, emergency shelter and housing programs. Engagement of Participants(s) is the objective of a successful Outreach.

13. Family means household with at least one minor child, household with an expectant mother, or household that are working towards reunification with minor children referred by the County.

14. Harm Reduction are policies, procedures, and practices that aim to reduce the negative consequences of behaviors that are detrimental to the Participant’s health and well-being (i.e., abuse of drugs and/or alcohol, failure to be medication compliant, engaging in criminal activity, choosing to sleep outside, etc.). In shelter settings, harm reduction is intended to prevent a Participant’s termination from the program based solely on his or her inability to stop engaging in harmful behaviors.

15. Homeless Management Information System (HMIS) means a database mandated by the U.S. Department of Housing and Urban Development used to collect participant-level data on the provision of housing and supportive services to individuals and families at risk of homelessness or experiencing homelessness.

16. Housing First Principles include access to a program is not contingent on sobriety,

minimum income requirements, lack of a criminal record, completion of treatment, participation in services, or other unnecessary conditions; support services are available but are voluntary, participant-driven, individualized, and flexible; and services are informed by a harm-reduction philosophy that recognizes that drug and alcohol use are a part of some clients' lives. Participants are engaged in nonjudgmental communication regarding drug and alcohol use and are offered education regarding how to avoid risky behaviors and engage in safer practices.

17. Housing Navigation means a community-based, solution-focused strategy that assists Participants with complex and frequent occurring issues that prevent them from accessing and maintaining stable housing.

18. Housing Specialist means a specialized position dedicated to developing the full array of housing options for their program and monitoring their sustainability for the population served in accordance with the minimal housing standards policy set by County for their program. The Housing Specialist is also responsible for assisting Participants with applications to low-income housing, housing subsidies, senior housing, etc.

19. Individuals refers to adults age 18 and older. Individuals may be single person households and adult-only households.

20. Information and Referrals refers to the provision of information on community, social, health and government programs in the community that address the needs of Participants. This may include information to access community health clinics, food pantries, support groups, etc.

21. Intake means the initial meeting between a Participant and Contractor's staff and includes an evaluation to determine if the Participant meets program criteria and is willing to seek services.

22. Motivational Interviewing is directive, Participant-centered counseling style for eliciting behavior change by helping Participants to explore and resolve ambivalence.

23. Outreach means the outreach to potential Participants to link them to appropriate supportive services and may include activities that involve educating the community about the services offered and requirements for participation in the programs. Such activities should result in Contractor developing its own Participant referral sources for the programs it offers.

24. Program Director means an individual who has complete responsibility for the day-to-day function of the program. The Program Director is the highest level of decision-making at a local, program level.

25. Progressive Engagement means a flexible, targeted, and efficient approach to service delivery. It recognizes each household's strengths and needs that can change over time, targeting resources to meet those needs and ensuring that the most intensive resources remain available to those with the greatest needs. Progressive Engagement is a practice of helping households end

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their homelessness as rapidly as possible, despite barriers, with minimal financial and support resources. More supports are applied to those households who struggle to stabilize.

26. Referral means providing the effective linkage of a Participant to another service, when indicated; with follow-up to be provided within five (5) working days to assure that the Participant has contacted the referred service.

27. Service Planning Areas (SPA) means the three geographic areas of Orange County (North, Central, and South) designated for the purposes of promoting increased coordination and collaboration in the delivery of programs and solutions that effectively address homelessness.

28. System of Care Data Integration System (SOCDIS) means a project that integrated nine databases, creating one Virtual Client Record with a Participant's demographics, program history and service utilization. Interdepartmental data and information sharing is facilitated by a Multi-Disciplinary Team that meets twice a month to coordinate care for high utilizers accessing County services/programs.

29. Transitional Aged Youth (TAY) refers to individuals who are between the ages of 18 to 24 at program entry. Transitional Aged Youth may also include households whose head of households is between the ages of 18 to 24.

30. Trauma-Informed Care requires that every part of the program's design and operation be approached with an understanding of trauma and the impact it has on those receiving services.

31. U.S. Department of Housing and Urban Development (HUD) means one of the executive departments of the United States Federal Government that is tasked with federal housing and urban development laws and administering of related programs and services.

B. Contractor and Administrator may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Attachment A to the Contract.

II. BUDGET

A. County shall pay Contractor in accordance with the Payments Paragraph of this Attachment A to the Contract and the following budget, which is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by Administrator and Contractor. The total of such payments shall not exceed the Maximum Obligation as specified in the Referenced Contract Provisions of the Contract.

ADMINISTRATION COSTS	PER MONTH ESTIMATED	PERIOD TOTAL
Salaries	\$800	\$3,200
Benefits	\$916	\$3,664
TSA National Administrative Support Rate 25.5%	\$42,000	\$182,868
SUBTOTAL ADMINISTRATIVE COSTS	\$43,716	\$189,733

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PROGRAM COSTS		
Salaries	\$46,480	\$185,920
Benefits	\$21,204	\$84,816
Services & Supplies	\$90,000	\$360,000
Contingency	\$15,000	\$79,531
SUBTOTAL PROGRAM COSTS	\$172,684	\$710,267
TOTAL GROSS COSTS	\$172,684	\$900,000
TOTAL MAXIMUM OBLIGATION	\$216,400	\$900,000

B. BUDGET/STAFFING MODIFICATIONS – Contractor may request to shift funds between budgeted line items, for the purpose of meeting specific program needs or for providing continuity of care to its members, by utilizing a Budget/Staffing Modification Request form provided by Administrator. Contractor shall submit a properly completed Budget/Staffing Modification Request to Administrator for consideration, in advance, which shall include a justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the sustaining annual impact of the shift as may be applicable to the current contract period and/or future contract periods. Contractor shall obtain written approval of any Budget/Staffing Modification Request(s) from Administrator prior to implementation by Contractor. Failure of Contractor to obtain written approval from Administrator for any proposed Budget/Staffing Modification Request(s) may result in disallowance of those costs.

C. FINANCIAL RECORDS – Contractor shall prepare and maintain accurate and complete financial records of its cost and operating expenses. Such records will reflect the actual cost of the type of service for which payment is claimed. Any apportionment of or distribution of costs, including indirect costs, to or between programs or cost centers of Contractor shall be documented, and will be made in accordance with GAAP.

III. PAYMENTS

A. County shall pay Contractor monthly, in arrears. All payments are interim payments only, and subject to Final Settlement in accordance with the Cost Report Paragraph of the Contract for which Contractor shall be reimbursed for the actual cost of providing the services hereunder; provided, however, the total of such payments do not exceed the Maximum Obligation as specified in the Referenced Contract Provisions of the Contract, and provided further, Contractor's costs are reimbursable pursuant to County, state, and federal regulations. A may, at its discretion, pay supplemental invoices for any month for which the provisional amount specified above has not been fully paid.

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1. In support of the monthly invoices, Contractor shall submit an Expenditure and Revenue Report as specified in the Reports Paragraph of this Attachment A to the Contract. Administrator shall use the Expenditure and Revenue Report to determine payment to Contractor as specified in Subparagraphs A.2. and A.3., below.

2. If, at any time, Contractor's Expenditure and Revenue Reports indicate that the provisional amount payments exceed the actual cost of providing services, Administrator may reduce County payments to Contractor by an amount not to exceed the difference between the year-to-date provisional amount payments to Contractor's and the year-to-date actual cost incurred by Contractor.

3. If, at any time, Contractor's Expenditure and Revenue Reports indicate that the provisional amount payments are less than the actual cost of providing services, Administrator may authorize an increase in the provisional amount payment to Contractor by an amount not to exceed the difference between the year-to-date provisional amount payments to Contractor and the year-to-date actual cost incurred by Contractor.

B. Contractor's invoicing shall be on a form approved or supplied by Administrator and provide such information as is required by Administrator. Invoices are due the twentieth (20th) day of each month. Invoices received after the due date may not be paid within the same month. Payments to Contractor should be released by County no later than thirty (30) calendar days after receipt of the correctly completed invoice.

C. All invoices to County shall be supported, at Contractor's facility, by source documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

D. Administrator may withhold or delay any payment if Contractor fails to comply with any provision of the Contract.

E. County shall not reimburse Contractor for services provided beyond the expiration and/or termination of the Contract, except as may otherwise be provided under the Contract, or specifically agreed upon in a subsequent agreement.

F. Contractor and Administrator may mutually agree, in writing, to modify the Payments Paragraph of this Attachment A to the Contract.

IV. REPORTS

A. Contractor shall maintain records and make statistical reports as required by Administrator.

B. Fiscal

1. Contractor shall submit monthly Expenditure and Revenue Reports to Administrator. These reports will be on a form acceptable to, or provided by, Administrator and will report actual

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costs and revenues for Contractor's program described in the Services Paragraph of this Attachment A to the Contract. The reports will be received by Administrator no later than the twentieth (20th) day following the end of the month being reported. Contractor must request in writing any extensions to the due date of the monthly required reports. If an extension is approved by Administrator, the total extension will not exceed more than five (5) calendar days.

2. Contractor shall submit monthly Year-End Projection Reports to Administrator. These reports will be on a form acceptable to, or provided by, Administrator and will report anticipated year-end actual costs and revenues for Contractor's program described in the Services Paragraph of this Attachment A to the Contract. Such reports will include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year. Year-End Projection Reports will be submitted in conjunction with the Monthly Expenditure and Revenue Reports.

C. Staffing – Contractor shall submit monthly Staffing Reports to Administrator. These reports will be on a form acceptable to, or provided by, Administrator and will, at a minimum, report the actual FTEs of the positions stipulated in the Staffing Paragraph of this Attachment A to the Contract and will include the employees' names, licensure status, monthly salary, hire and/or termination date and any other pertinent information as may be required by Administrator. The reports will be received by Administrator no later than twentieth (20th) day following the end of the month being reported. If an extension is approved by Administrator, the total extension will not exceed more than five (5) calendar days.

D. Programmatic – Contractor shall submit monthly reports to Administrator. These reports shall be on a form acceptable to, or provided by, Administrator. The reports will be received by Administrator no later than twentieth (20th) day following the end of the month being reported. Administrator may request additional program reports of Contractor in order to determine the quality and nature of services provided hereunder. Administrator will be specific as to the nature of information requested and may allow up to thirty (30) calendar days for Contractor to respond to request. The reporting shall support County in evaluating Contractor's performance as it related to Participant data, program linkages and units of services. Contractor will be required to utilize the HMIS to support with data collection, management, and reporting standards and used to collect participant-level data

2. Contractor is required to submit reporting at regular intervals to County that details the following broken down by:

- a. Total number of eligible households that receive assistance;
- b. Composition of the households – demographics, size and type;
- c. Number of unduplicated Participants served;
- e. Length of assistance;

- f. Number of Participants exits and exit types; and
- g. CES status – total number referrals received from the CES and related status.

E. Additional Reports – Contractor shall submit additional reports as reasonably required by Administrator concerning Contractor’s activities as they affect the duties and purposes contained in the Contract. Administrator will provide Contractor with at least thirty (30) calendar days’ notice if such additional reports are required and shall explain any procedures for reporting the required information.

F. Contractor shall report all special incidents to Administrator and shall submit a written Special Incident Report in accordance with the Notices Paragraph of the Contract and in accordance with the Standards of Care. Special incidents shall include, but are not limited to, Participant's suicide or attempted suicide, elopement or absence without leave, serious injury, death, criminal behavior, or any other incident which may expose County or Contractor to liability.

G. Subject to mutual agreement in writing, the Contractor and Administrator may alter the reporting requirements. Contractor and Administrator may mutually agree, in writing to modify the Reports Paragraph of this Attachment A to the Contract.

V. SCOPE OF SERVICES

A. Activities – Contractor shall perform all services set forth in the program description and will be responsible for administering program funded services with Federal, State, or local funds, in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds.

B. Program Description – Contractor shall operate the Cold Weather Emergency Shelter (Program) for individuals (adult only households) experiencing homelessness in Orange County at the identified Salvation Army site located at 818 E. Third Street, Santa Ana, CA or at an alternative site as agreed upon by the County and Contractor. The Program will provide individuals experiencing homelessness with a safe place to sleep, a hot meal, case management and supportive services, and other personal care and housing assistance needs during the cold weather season in Orange County.

C. Eligible Population – The Program will serve individuals experiencing homelessness. An individual is a person aged 18 and older and may include adult only households. A person and/or household is considered to be experiencing homelessness only when he/she/they lack(s) a fixed, regular and adequate nighttime residence and reside(s) in a place not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings, motels; or other shelters, including emergency shelters and transitional housing; or for reference as further defined in 24 CFR Part 576.2.

Additionally, to access the Program individuals experiencing homelessness must be:

- 1. Able to do their Activities of Daily Living.

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2. Agreeable to follow posted shelter rules, including signing in at entry.
3. Agreeable not to use or sell drugs or illegal substances on the premises.
4. Agreeable to treat other program participants, staff and the property with respect.
5. Agreeable to obey fire and other safety regulations.

The Contractor will rapidly triage families (households with children), unaccompanied youth, and victims of domestic violence or sex trafficking and provide a list of phone numbers and assist in contacting local agencies who can provide specialized programs and services to better address the needs of these populations, as quickly as possible.

D. Use of Funds – Funds shall be used to provide contracted services and operations of the Program, such as providing safety net services and case management services that promote connections to other homeless service providers, increased housing stability and increased access to benefits and/or employment resources. Said services and operations shall be low barrier and promote an engagement rich environment in which individuals experiencing homelessness make connections to supportive services, community linkages, health care, and stable housing.

Contractor will implement the Standards of Care at the Program and the County will take into consideration the limitations of the Program operations when monitoring for compliance with the Standards of Care. The Contractor will ensure proper staffing, adequate training and day to day operations that meet the needs of participants.

E. Reporting – Contractor is required to submit reports, as agreed upon with County, in a form mutually agreed upon by Contractor and County. Reporting requirements may include but are not limited to number of program participants who participate in safe sleep program, number of participants who are employed or have secured employment, data relating to entries, exits, and exit types of the Program, etc. Additional reporting items will be determined in coordination with County and Contractor on an as needed basis.

Contractor shall enter the data in the Homeless Management Information System (HMIS) as required by the County and funding sources. Contractor shall participate in HMIS and follow the HMIS Policies and Procedures as adopted by the Orange County Continuum of Care (CoC). Contractor shall collaborate with County and HMIS Lead on CES and other Orange County CoC services and efforts to address homelessness.

F. Description of Program – The Program shall meet the County's need to provide Cold Weather Emergency Shelter services to up to 100 individuals experiencing homelessness during

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the cold weather months. The Contractor's responsibility will include operating, maintaining, and staffing the Program as, well as coordinating the supportive services offered to Participants. The Contractor shall operate the Program, at minimum 14 hours overnight, seven days a week from December 1, 2022, to March 31, 2023.

G. Description of Service Components – As part of the Program, the Contractor shall provide the following two service components to all participants:

1. Shelter Services will provide up to 100 beds for people seeking a safe place to sleep overnight starting at 5 p.m. in the evening and ending at 7 a.m. the following morning. Participants accessing shelter services get a hot meal at dinner, a bagged breakfast and snacks, and access to hygiene services, including showers and restrooms.

2. Wrap Around Supportive Services will be provided to participants in the form of light case management services, referrals and linkages to community-based organizations, medical and behavioral health care services and other emergency shelters programs for which the participant is eligible. Participants that regularly participate (returning weekly for three consecutive weeks) in the Program will be connected to the Coordinated Entry System and receive additional support that will assist towards permanent housing and housing stability.

H. Shelter Requirements – Contractor shall:

1. Ensure the Program operates overnight, at minimum 14 hours a day, seven days a week, and starting at approximately 5:00 p.m. until 7:00 a.m.

2. Have the capacity to activate to operate as a 24-hour emergency shelter program, if required or needed in the event of severe inclement weather. County will inform Contractor of needed 24-hour emergency shelter activation and deactivation.

3. Have a 24 hour contact available to Program staff for emergency purposes and communication policies and procedures in place to notify the County as appropriate.

4. Have a 24 hour contact available to County for emergency purposes and to coordinate response as appropriate.

5. Implement the Standards of Care in the operations of the Program and coordinate with County in the implementation process, seeking guidance as appropriate.

6. Provide nightly shelter services in a clean, safe, and well-maintained environment.

7. Ensure the Program operates at a facility in good repair, free of leaks, with adequate heat and ventilation, hot water and meets all local building, health, and safety standards.

- a. At minimum, the facility shall meet the Emergency Solutions Grant's (ESG) Habitability Standards.
 - b. Facility must be able to accommodate the needs of people with Disabling conditions per the Americans with Disabilities Act (ADA).
8. Ensure the Program operates at a facility with a suitable number of bathroom sink, toilet, and shower facilities to meet the needs of all participants.
 9. Provide clean towels and hygiene necessities and toiletries, such as shampoo, soap, and toothpaste, to participants.
 10. Sleeping space should be adequate in size, with appropriate spacing on the sides so that guidance from local public health officials regarding COVID-19 safety protocols is implemented.
 11. Provide each participant with a clean bed, bedding/blanket and towel daily.
- I. Site Management Tasks – Contractor shall:
1. Take appropriate action to address medical and/or behavioral health emergencies.
 2. Complete required reporting and gathering data mutually agreed on by Contractor and County and as required by funding sources
 3. Complete appropriate record keeping in accordance with funding source requirements, such as the Declaration of Homelessness form for each participant utilizing the Program.
 4. Provide supervision of the participants enrolled in the Program including shelter entry intake processes and the scheduling of meals, showers, and other personal services as needed.
 5. Provide Site Managers that will be responsible for the ongoing supervision of the Program and staff.
 6. Employ trained security personnel (Security) in support of the Program operations during all hours of Program operations, which shall support the overall safety of participants and staff. Security personnel will enforce rules such as no drinking or drug use on the premises, no smoking in the building, no weapons, etc.
 7. Launder bedding, blankets and towels on a regular basis as part of the core operations of the Program to ensure participants are provided with a clean bedding, blankets and towels.
 8. Ensure sleeping areas, including beds, mattresses, mats and/or cots, are regularly cleaned and use reasonable care to ensure sleeping areas remain clean and free of parasitic infestations and other pests.

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9. The site must be cleaned and disinfected daily to ensure cleanliness and a safe environment for participants. Cleaning includes sweeping the floor, organizing sleeping areas, stacking towels and blankets for laundry pick-up, cleaning and disinfecting food areas and restrooms.

J. Administrative Management Tasks – Contractor shall:

1. Work in partnership with the County to be a Good Neighbor to the surrounding community. This includes informing the public about the positive aspects of the Program, being responsive to community concerns and working closely with host city and County government to minimize the impact of the Program on the surrounding neighborhood.

2. Submit policies and procedures for the Program, as requested by the County, for all aspects of services, management plan, staff responsibilities and staff coordination.

3. Coordinate with all County agencies providing supportive services to program participants including but not limited to the County Executive Office (CEO), Health Care Agency (HCA), Social Services Agency (SSA), and OC Community Resources (OCCR).

4. Engage local community-based organizations, non-profit agencies, social services programs, and volunteers to assist with supportive services provided at the Program. All efforts shall be coordinated with current County services and other contracted partners, as needed.

5. Provide supplies and equipment as needed for the ongoing operations of the Program. It is the Contractor's responsibility to inventory the supplies and procure supplies as needed.

6. Coordinate with County on administrative functions such as program operation meetings, site monitoring and requested documentation, as necessary and appropriate.

7. Complete a log of activities for each night, including but not limited to reporting the number of participants served, referrals made to community services, long term emergency shelter and other housing opportunities.

8. Track and submit reports on all services provided on-site, including total number of volunteers assisting the staff and any service provider that may have engaged with the program.

9. Complete and submit all incident reports to the County within 24 hours of occurrence.

10. Submit reports on a daily, weekly, and monthly basis. Daily report will include occupancy numbers, and other data points as agreed upon with the County. Data reports from HMIS and due dates for the weekly and monthly reports will be items mutually agreed upon with the County.

K. Performance Metrics – Contractor shall:

1. Provide 120 nights of emergency shelter services
2. Maintain an average of at least 75 percent bed occupancy through the term of the contract
3. Refer at least 30 percent of participants to additional emergency shelter or other longer-term housing opportunities
4. Refer at least 30 percent of participants enrollments into the Coordinated Entry System

L. Program Design – The Contractor shall incorporate the following aspects into the Program Design:

1. Low Barrier Criteria – The Program is designed to encourage program participation by operating with low barriers to entry and accommodating any person, over the age of 18 years old, who identifies as experiencing homelessness in Orange County. The Contractor must welcome all individuals who are experiencing homelessness and seeking respite shelter.

2. Safe Shelter Access – The Program shall be open starting in the evening hours, seven days a week, including all holidays. The Program shall provide 100 emergency shelter beds to eligible program participants on a first come, first serve basis. The goal of the Program is to provide a safe, secure sleeping area to those seeking shelter.

3. Sleeping Areas – Contractor shall provide 100 shelter beds each night. The Contractor shall work with Public Health Services to configure the site to accommodate a variety of needs and implement appropriate public health guidance. Participants will be assigned a bed and blanket through the intake process. The Program will have sleeping areas designated for men, women, and persons with disabilities.

4. Meals – Contractor shall provide meals in a designated area of the facility for participants and as part of the Program operations. Meal-related supplies will be provided by Contractor. Contractor will coordinate and provide one hot meal at dinner, one bagged meal, and snack per day.

5. Storage – Contractor shall allow participants to bring a small volume and small number of personal items into their sleeping area. Participants will be allowed to bring one bicycle each onsite. Contractor recognizes that program participants value their belongings, and Contractor will work with each program participant to find the balance between creating a safe and sanitary environment while honoring the value of personal possessions. Each program

participant must remove their belongings from the site on a daily basis. Contractor will not provide on-site vehicle parking for Participants. Participants with vehicles will be responsible for finding appropriate parking for their vehicles. Entry Process – The Program will operate utilizing an established first come, first served process as coordinated by Contractor and County to gain access for overnight shelter services. The established entry process will ensure that beds are available for interested participants, and that interested participants meet eligibility requirements; however, if capacity permits, individuals seeking shelter for the night will be allowed to stay overnight providing they are not a danger to themselves or others.

a. Contractor’s Security personnel will facilitate the entry process to the facility and ask those participants entering to sign in. Contractor’s staff will be available to assist interested program participants enroll in the Program and facilitate connections to supportive services for interested participants.

b. At nighttime, the designed “lights out” time is 11 p.m. and will be enforced by Contractor’s Security. Program participants who choose to leave during the night are free to do so; however, program participants will not be allowed back into the facility until the next night. Additionally, Security will generally close showers, and other amenities during “lights out”; however, anyone needing a reasonable accommodation will be accommodated, if possible.

6. Transportation – The Contractor shall provide transportation to and from the Program location from specified pick-up/drop-off points coordinated with the City where the program is being operated.

7. Security – The Contractor will ensure Security personnel is part of the Program staffing and is in place during the operation hours of the program, seven days a week, to ensure a peaceful environment for those seeking services and respite from the streets.

8. Case Management Services – The Program shall provide Case Management to the participants who utilize this low barrier emergency shelter and access available resources offered by the Contractor. The case managers will aid in connecting program participants to supportive services that best meet their needs, including facilitating the transition into longer term shelter or permanent housing.

a. The goal of low-barrier services is to provide a progressive engagement model to program participants who are experiencing chronic homelessness who may be reluctant to seek assistance due to mental health challenges, substance use, and chronic health conditions. Once

linked to existing supportive services within the County and partnering agencies, program participants will work towards permanent supportive housing or alternative stable housing, and stability.

b. Contractor shall operate Program and offer supportive services in a culturally competent manner, including the intake and assessment process and ongoing case management. Program participants will have the rules and intake forms explained to them. When English is their second language, the rules and intake forms will be explained in their primary language whenever feasible.

c. Contractor acknowledges that they are required to collaborate with other community-based organizations and homeless services agencies.

9. Emergency Response – Contractor will partner with medical or law enforcement in the event of an emergency. With the nature of the population being served at the Program, there is a need to take precautions, should a medical need or emergency arise. The first reaction for any emergency situation would be to call 9-1-1. All staff and volunteers at the Program shall be trained on the appropriate emergency procedures in order to handle crisis situations in the most effective manner possible.

M. Staffing

1. Staffing should reflect diverse populations served, and at a minimum include English and Spanish speaking personnel. Staff should demonstrate the ability to communicate effectively in both written and verbal formats, and the ability to problem solve effectively within the structure of the program, the contract, and budgetary parameters, as appropriate to their respective job descriptions.

2. Contractor shall provide staffing patterns which include a minimum ratio of one (1) program staff per twenty (20) participants. Given the expected high service needs of most of the program participants, the Contractor has developed staffing plans based on addressing those needs while keeping everyone safe. Staffing pattern shall not be limited to, the following required positions for the comprehensive services:

a. Program Director – To be responsible for program oversight and ensuring appropriate staffing and support for the Program. To coordinate program details and communicate directly with County regarding program operations.

b. Shift Manager and/or Supervisor(s) – To be responsible for the day-to-day

operations of the program, including but not limited to, monitoring, daily submission of bed utilization/rosters to County, ensuring referrals are appropriately processed and providing direction to intake and program staff.

c. Intake and Program Staff – To complete program intake, complete HMIS data entry, and provide light case management.

d. Program Monitors – To ensure ongoing and smooth operations of the facility and responsible for setting up the daily cots, and daily meal distribution.

e. Security – To provide on-site Security during all hours of operation of the program. Security must not consist of program staff and have appropriate training.

f. Custodian/Janitorial – To ensure location is cleaned and disinfected daily to meet the requirements established by the lessor of the location.

3. Contractor shall make its best effort to ensure that services provided pursuant to the Contract are provided in a manner that is culturally and linguistically appropriate for the population(s) served. Contractor shall ensure that documents are maintained of such efforts which may include, but not be limited to, records of participation in County-sponsored or other applicable training; recruitment and hiring Policies and Procedures; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, individuals who are physically challenged.

VI. FILE MAINTENANCE AND DOCUMENTATION

1. Contractor shall prepare all applicable files and perform all administrative management tasks, as indicated in the Contract.

2. Contractor Shall maintain all records required by the federal regulations specified in 24 CFR 570.503(b)(2), 570.506, 570.507, 570.508 that are pertinent to the activities to be funded under this Contract.

3. Records providing a full description of each activity undertaken.

4. Financial records as required by 24 CFR 570.502, and OMB Circular A-87; and

5. Other records necessary to document compliance with Subpart K of 24 CFR 570.

6. Annual Audit Submission: Independent audits to be performed by a Certified Public Accountant, which shall include an audit of funds received from County, in accordance with applicable regulatory requirements. Copies of each required audit report must be provided to

County within thirty (30) calendar days after the date received by Contractor.

7. Retention: Contractor shall retain all records pertinent to expenditures incurred under this Contract for a period of five (5) years after the termination of all activities funded under this Contract, or after the resolution of all federal audit finding, whichever occurs later. Records for non-expendable property acquired with funds under this Contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after s/he has received final payment.

VI. STAFFING

A. Contractor shall provide effective administrative management of the budget, staffing, recording, and reporting portion of the Contract with County. If administrative responsibilities are delegated to subcontractors, Contractor must ensure that any subcontractor(s) possess the qualifications and capacity to perform all delegated responsibilities. Responsibilities include but are not limited to the following:

1. Designate the responsible position(s) in your organization for managing the funds allocated to this program;
2. Maximize the use of the allocated funds;
3. Ensure timely and accurate reporting;
4. Maintain appropriate staffing levels;
5. Ensure staff possess the qualification and capacity to perform responsibilities tied to the staff's position.
6. Effectively communicate and monitor the Program for its success;
7. Maintain communication between the Contract key staff and Program Administrators; and,
8. Act quickly to identify and solve problems.

B. Contractor shall make its best effort to ensure that services provided pursuant to the Contract are provided in a manner that is culturally and linguistically appropriate for the population(s) served. Contractor shall ensure that documents are maintain of such efforts which may include, but are not limited to, records of participation in County sponsored or other applicable trainings; recruitment and hiring policies and procedures; copies of literature in multiple languages as appropriate, and descriptions of measures taken to enhance accessibility for, and sensitivity to individuals who are physically challenged.

C. Contractor shall, at a minimum, provide the following staffing pattern expressed in Full-Time Equivalent (FTEs) continuously throughout the term of the Contract. One (1) FTE shall be equal to an average of forty (40) hours work per week.

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Four Month Period: December 1, 2022 to March 31, 2023	
ADMINISTRATION FTE	PER MONTH
Quality Assurance	0.125
SUBTOTAL ADMINISTRATIVE FTE	0.125
PROGRAM FTEs	
Site Supervisor	1
Program Coordinator	1
Housing Case Manager	1
Pet Care Specialist	0.25
Lead Ambassador	1
D. Contractor shall maintain personnel files for each staff member, including the Executive Lead Ambassador	
Ambassador	1
Ambassador	1
Ambassador	1
Ambassador	1
Ambassador	0.6
Ambassador	0.6
Ambassador	0.6
Ambassador	0.6
Ambassador	0.4
Ambassador	0.4
Ambassador	0.3
Ambassador	0.3
SUBTOTAL PROGRAM FTEs	13.05
TOTAL FTEs	13.175
TOTAL MAXIMUM FTEs	13.175

Director and other administrative positions, which shall include, but not be limited to, an application for employment, qualifications for the position, documentation of bicultural/bilingual capabilities (if applicable), pay rate and evaluations justifying pay increases.

E. Contractor and Administrator may mutually agree, in writing, to modify the Staffing Paragraph of this Attachment A to the Contract.

Contract Summary Form

The Salvation Army

SUMMARY OF SIGNIFICANT CHANGES

New Cold Weather Emergency Shelter Services Contract with The Salvation Army.

SUBCONTRACTORS

This contract does not currently include subcontractors or pass through to other providers.

CONTRACT OPERATING EXPENSES

Cold Weather Emergency Shelter Services:

ADMINISTRATION COSTS	PER MONTH ESTIMATED	PERIOD TOTAL
Salaries	\$800	\$3,200
Benefits	\$916	\$3,664
TSA National Administrative Support Rate 25.5%	\$42,000	\$182,868
SUBTOTAL ADMINISTRATIVE COSTS	\$43,716	\$189,733
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Salaries	\$46,480	\$185,920
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SUBTOTAL PROGRAM COSTS	\$172,684	\$710,267
TOTAL GROSS COSTS	\$172,684	\$900,000
TOTAL MAXIMUM OBLIGATION	\$216,400	\$900,000

Cold Weather Emergency Shelter Services FTEs:

Four Month Period: December 1, 2022 to March 31, 2023	
ADMINISTRATION FTE	PER MONTH
Quality Assurance	0.125
SUBTOTAL ADMINISTRATIVE FTE	0.125

PROGRAM FTEs	
Site Supervisor	1
Program Coordinator	1
Housing Case Manager	1
Pet Care Specialist	0.25
Lead Ambassador	1
Lead Ambassador	1
Ambassador	1
Ambassador	1
Ambassador	1
Ambassador	1
Ambassador	0.6
Ambassador	0.6
Ambassador	0.6
Ambassador	0.6
Ambassador	0.4
Ambassador	0.4
Ambassador	0.3
Ambassador	0.3
SUBTOTAL PROGRAM FTEs	13.05
TOTAL FTEs	13.175
TOTAL MAXIMUM FTEs	13.175



Sole Source Request Form Instruction Sheet

COUNTY POLICY ON SOLE SOURCE CONTRACTS:

It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. Per the Contract Policy Manual, a sole source procurement shall not be used unless there is clear and convincing evidence that only one source exists to fulfill the County's requirements, CPM section 4.5. All sole source purchases requiring Board of Supervisors approval shall be justified as meeting the sole source standard in the Agenda Staff Report. The Agenda Staff Report shall clearly state that it is a sole source procurement. The Sole Source Justification, as described below, shall be attached within the Agenda Staff Report (CPM, Section 4.5)

SECTION I – INSTRUCTIONS FOR COMPLETING THE ATTACHED FORM

(To be completed by the department's end-user, Program Manager, or Subject Matter Expert)

1. Formal justification is required for sole source procurements when competitive bid guidelines require pricing from competing firms.
2. A written justification will be prepared by the department and approved by the department head or designee.
3. Prior to execution of a contract, the County Procurement Officer or designee shall approve ALL sole source requests for commodities that exceed \$250,000 annually, services exceeding \$75,000 annually and all Board contracts despite the amount. Board approval is required for all sole source contracts for commodities that exceed \$250,000 annually and services exceeding \$75,000 annually or a two (2) year consecutive term, regardless of the contract amount. Any amendments to Board approved sole source contracts require a new sole source form.
4. If vendor is a retired, former Orange County employee, CEO Human Resource Services shall approve the sole source request, regardless of the sole source amount.
5. Valid sole source requests will contain strong technological and/or programmatic justifications. Requests will explain how it is a sole source purchase, provide a clear and convincing justification and detail the purchasing history (who, what, when, how and where).
6. Sole source procurements may be approved based upon emergency situations in which there is not adequate time for competitive bidding.
7. Sole source requests for Human Service contracts will be guided by the regulations of the funding source.
8. Each question in Section II of this form must be answered in detail and the form signed by the department head with concurrence of the Deputy Purchasing Agent.
9. All sole source request forms must be entered into the County's online bidding system along with its supporting documentation.
10. The Deputy Purchasing Agent (DPA) shall retain a copy of the justification/approval as part of the contract file.
11. Request for Solicitation Exemption (*For purchases with special circumstances, and/or when it is determined to be in the best interest of the County*) – check the Solicitation Exemption box and complete additional question no 8.



Sole Source Request Form

Sole Source BidSync # 017-2279107-CR-SS

SECTION II – DEPARTMENT INFORMATION (Complete in its entirety)

Department: County Executive Office/Office of Care Coordination		Date: 9/9/2022	
Vendor Name: The Salvation Army		Sole Source BidSync Number: 017-2279107-CR-SS	
<p>Is the above named vendor a retired employee of the County of Orange? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "Yes", review and Approval is required from CEO Human Resource Services prior to contract execution.</p>			
Contract Term (Dates): October 18, 2022 - March 31, 2023		Is Agreement Grant Funded? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Percent Funded: Federal 40%, County 60% Funding Source: CDBG, ESG, Fund 15U, Net County Cost	
Contract Amount? \$900,000		Is this renewable? If yes, how many years? No	
Type of Request: <input checked="" type="checkbox"/> New <input type="checkbox"/> Multi-Year <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Increase			
Renewal Year: N/A		Did vendor provide a sole source affidavit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please attach	
Board Date: 10/18/2022	ASR Number: 22-000676	If not scheduled to go to the Board explain why? N/A	
Does Contract include Non-Standard Language? If yes, explain in detail. No, Contract does not include non-standard language			
Was Contract Approved by Risk Mgmt.? Yes, Risk Management reviewed RFP Insurance Requirements to be included with awarded contract prior to RFP release.		Was Contract Approved by County Counsel? County Counsel final review and approval is pending	
Were any exceptions taken? If yes, explain in detail. No exceptions were taken			
<input checked="" type="checkbox"/> DPA certifies that they have read and verified that the information is true and satisfies the sole source requirements listed in the County Contract Policy Manual.			
<input type="checkbox"/> Solicitation Exemption <i>(For purchases with special circumstances, and/or when it is determined to be in the best interest of the County.)</i>			



Sole Source Request Form

Sole Source Bidsync # 017-2279107-CR-SS

SECTION III – SOLE SOURCE JUSTIFICATION

- 1. Provide a description of the type of contract to be established.** *(For example: is the contract a commodity, service, human service, public works, or other – please explain.) Attach additional sheet if necessary.*

This is a human services contract for the design, implementation and operations of the Cold Weather Emergency Shelter (Program) during the FY2022-23 cold weather season. The scope of services for the Program supports the efforts to operate a low-barrier, emergency shelter for persons experiencing homelessness in Orange County from December 1, 2022, to March 30, 2023.

- 2. Provide a detailed description of services/commodities and how they will be used within the department. If this is an existing sole source, please provide some history of its origination, Board approvals, etc.** *(This information may be obtained from the scope of work prepared by the County and the vendor's proposal that provides a detailed description of the services/supplies.) Attach additional sheet if necessary.*

The Cold Weather Emergency Shelter (Program) will provide individuals experiencing homelessness a safe place to sleep, a hot meal, case management and supportive services, and other personal care and housing assistance needs during the cold weather season of 2022-2023 in Orange County. The Program will operate utilizing a low-barrier model and provide safety net services that promote connections to Orange County Homeless Service System, including other homeless service providers, increased housing stability and increased access to benefits and/or employment resources. Additionally, the services available through the Program will promote an engagement rich environment in which people experiencing homelessness make connections to supportive services, community linkages, health care, and advance the individual on their path to stable housing and self-sufficiency.

- 3. Explain why the recommended vendor is the only one capable of providing the required services and/or commodities.** **How did you determine this to be a sole source and what specific steps did you take? Please list all sources that have been contacted and explain in detail why they cannot fulfill the County's requirements. Include vendor affidavit and/or other documentation which supports your sole source.** *(Responses will include strong programmatic and technological information that supports the claim that there is only one vendor that can provide the services and/or commodities. Your response will include information pertaining to any research that was conducted to establish that the vendor is a sole source, include information pertaining to discussions with other potential suppliers and why they were no longer being considered by the County.) Attach additional sheet if necessary.*

On July 19, 2022, the County Executive Office (CEO) on behalf of the Office of Care Coordination issued a Request for Proposals (RFP) seeking proposals from qualified organizations to provide Cold Weather Emergency Shelter – Seasonal Services for persons experiencing homelessness in Orange County. The Office of Care Coordination issued an RFP Addendum extending the period for questions and answers to the RFP deadline while additional outreach was conducted. The Office of Care Coordination issued a second RFP Addendum extending the deadline for response to be submitted to the RFP. There were zero respondents to the RFP, as such the Office of Care Coordination approached the three prior Program operators and one additional homeless service providers in Orange County who were unable to commit to the operations for various reasons. The Office of Care Coordination approached and is recommending The Salvation Army, for the provision of services due to their appropriate and extensive experience in operating emergency shelters, which is demonstrated through their work including locations within the City of Santa Ana and the City of Anaheim.



Sole Source Request Form

Sole Source Bidsync # 017-2279107-CR-SS

The Salvation Army prides themselves in providing services with dignity to persons experiencing homelessness by providing individuals experiencing homelessness with a clean, safe place to stay. The Salvation Army's services include providing food, clothing, case management, counseling, job search assistance and integrated employment programs to assist persons experiencing homelessness.

4. How does recommended vendor's prices or fees compare to the general market?

Attach quotes for comparable services or supplies. Attach additional sheet if necessary.

The proposed budget from the recommended vendor, The Salvation Army, is slightly higher from the operations from the previous Cold Weather Emergency Shelter (Program) operators and cold weather seasons. The proposed budget adequately covers the costs needed to fund staffing, services and supplies required for the operations of the Program at a location owned and managed by The Salvation Army. Due to The Salvation Army's extensive experience in operating shelter programs, the recommended vendor has proposed costs in alignment with competitive salaries for their agency that will support staff retention and high-quality services. Additionally, the proposed costs for security, food and transportation provided by The Salvation Army leverage agreements with already established vendors.

5. If the recommended vendor was not available, how would the County accomplish this particular task?

Attach additional sheet if necessary.

If the recommended vendor was not available, the County of Orange (County) would not be able to operate the Cold Weather Emergency Shelter (Program) and the entire Program would be in jeopardy of not operating this winter season thus greatly impacting the available resources to serve individuals experiencing homelessness, especially during inclement weather. There are no other vendors able to operate the Program, as the previous three operators turned down the opportunity and two additional homeless service providers also declined. It is in the County's best interest and welfare of individuals experiencing homelessness of Orange County to provide access to emergency shelter beds during the cold weather months. Given that there were zero respondents to the Request for Proposals (RFP) despite extended the deadline and completing targeted outreach, there are no other vendors to operate the Program and implement the unique requirements of this program's overnight operational services. The recommended vendor is well positioned to be able to operate the Program by providing a unique expertise and understanding of the target population. In the immediate, the County would not be able to replicate this service and respond in a timely manner to the Board of Supervisor's directive.

6. Please provide vendor history – name change, litigation, judgments, aka, etc. for the last 7 years.

Through the normal County of Orange (County) vetting process, The Salvation Army has had no judgements or name changes within the last seven (7) years. They do have five (5) litigations items pending, none of which are of significance to the County, and immaterial to their delivery of services to be provided.

7. If vendor is a retired, former employee, has the vendor previously been rehired as a contractor within the last three years? Yes No

If yes, provide explanation/support for hiring the retired, former employee as a vendor and provide contract dates, scope of work, and total amounts paid under each contract.



Sole Source Request Form

Sole Source Bidsync # 017-2279107-CR-SS

Not applicable

8. Explain (in detail) why a request for Solicitation Exemption is needed. *(Only applicable for Solicitation Exemption)*

Attach additional sheet if necessary.

Not applicable



Sole Source Request Form

Sole Source Bidsync #017-2279107-CR-SS

SECTION IV – AUTHOR/REQUESTOR

Signature: DocuSigned by: <i>Karen Betances</i> A793CE27153E4B7...	Print Name: KAREN BETANCES	Date: 9/12/2022
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SECTION V – CEO Human Resource Services APPROVAL (Review and approval is required when vendor is a Retired, Former Employee.)

Signature:	Print Name:	Date:
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SECTION VI – DEPUTY PURCHASING AGENT CONCURRENCE

Signature: DocuSigned by: <i>Nicole Swain</i> 8222E9451CB8444...	Print Name: NICOLE SWAIN	Date: 9/12/2022
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SECTION VII – DEPARTMENT HEAD APPROVAL

Signature: DocuSigned by: <i>Douglas Becht</i> C3E502060A0B46A...	Print Name: DOUG BECHT	Date: 9/15/2022
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SECTION VIII – COUNTY PROCUREMENT OFFICE

Prior to execution of a contract, the County Procurement Officer or designee shall approve All Sole Source requests for Commodities that exceed \$250,000, Capitol Assets and services exceeding \$75,000, and All other Sole Source requests that require Board approval despite the amount. Approvals are obtained electronically through the County’s online bidding system.

SOLICITATION EXEMPTION – CEO USE ONLY:

Board of Supervisor Notification Date:			
Comments:			
CPO: <input type="checkbox"/> Approved <input type="checkbox"/> Denied		CFO: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	
CPO Authorized Signature:		CFO Authorized Signature:	
Date:		Date:	



County Executive Office

Memorandum

October 12, 2022

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2022.10.12 16:18:37
-0700'

S42E

2022 OCT 13 PM 12:45
RECEIVED
CLERK OF THE BOARD OF SUPERVISORS

The County Executive Office is requesting a Supplemental Agenda Staff Report for the October 18, 2022, Board Hearing.

Agency: Sheriff-Coroner Department
Subject: Award Job Order Contracts for Various Services
Districts: All Districts

Reason Item is Supplemental: Contracts have expired and the department is trying to shorten the lapse. Critical projects started in the jail facilities were stopped and they need to resume promptly.

Justification: Approval of this Supplemental will allow the Sheriff-Coroner to proceed with various critical projects that require specialized construction services within the County jails and other support facilities. This item cannot be moved to a later Board date to avoid a further lapse in service. The current contracts ended on 8/31/22, 9/21/22 and 9/26/22. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

Doug Chaffee, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT



MEETING DATE: 10/18/22
 LEGAL ENTITY TAKING ACTION: Board of Supervisors
 BOARD OF SUPERVISORS DISTRICT(S): All Districts
 SUBMITTING AGENCY/DEPARTMENT: Sheriff-Coroner
 DEPARTMENT HEAD REVIEW: [Signature]
 DEPARTMENT CONTACT PERSON(S): Department Head Signature
 Brian Wayt (714) 647-1803
 Matt Monzon (714) 935-6876

RECEIVED
 022 OCT 13 PM 12:46
 CLERK OF THE BOARD
 COUNTY OF ORANGE

SUBJECT: Award Job Order Contracts for Various Services

CEO CONCUR

[Signature]

CEO Signature

Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of Orange, ou=CEO,
 email=frank.kim@ocgov.com,
 c=US
 Date: 2022.10.12 16:18:58 -0700

COUNTY COUNSEL REVIEW

approved agreements to form

Action

[Signature]
County Counsel Signature

CLERK OF THE BOARD

Discussion

3 Votes Board Majority

Budgeted: Yes

Current Year Cost: See Financial Impact Section

Annual Cost: See Financial Impact Section

Staffing Impact: No

of Positions:

Sole Source: No

Current Fiscal Year Revenue: N/A

Funding Source: See Financial Impact Section

County Audit in last 3 years No

Prior Board Action: 8/23/2022 #5, 8/24/2021 #12

RECOMMENDED ACTION(S)

1. Award Job Order Contracts for General Building Services in an annual amount not to exceed \$5,000,000 per contractor for an aggregate amount of \$45,000,000, effective for a one-year term upon execution of contracts, as follows:
 - a. CTG Construction, Inc. dba C.T. Georgiou Painting Co.
 - b. Dalke & Sons Construction, Inc.
 - c. Horizons Construction Company International, Inc.
 - d. MIK Construction Inc.
 - e. MTM Construction, Inc.
 - f. New Creation Engineering & Builders, Inc. dba New Creation Builders
 - g. PUB Construction, Inc.
 - h. SJD&B, Inc.
 - i. Vincor Construction, Inc.

2. Award Job Order Contracts for Electrical Services in an annual amount not to exceed \$5,000,000 per contractor for an aggregate amount of \$15,000,000, effective for a one-year term upon execution of the contracts, as follows:
 - a. Baker Electric & Renewables LLC dba Baker Electric
 - b. Federal Technology Solutions, Inc.
 - c. Mel Smith Electric, Inc.
3. Award Job Order Contracts for Mechanical Services in an annual amount not to exceed \$5,000,000 per contractor for an aggregate amount of \$10,000,000, effective for a one-year term upon the execution of the contracts, as follows:
 - a. ABM Building Solutions, LLC
 - b. Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
4. Award Job Order Contracts for Roofing Services in an annual amount not to exceed \$5,000,000 per contractor for an aggregate amount of \$10,000,000, effective for a one-year term upon execution of the contract, as follows:
 - a. AME Builders Inc dba AME Roofing
 - b. Commercial Waterproofing Systems, Inc. dba ERC Roofing & Waterproofing
5. Authorize the Sheriff-Coroner Department's Director of Research and Development Division or designee to execute the Job Order Contracts when the required bonds and certificates of insurance have been submitted and approved by the County Executive Office/Office of Risk Management and County Counsel.
6. Authorize return of bid guarantees to all bidders upon execution of the contracts.

SUMMARY:

Approval of the Job Order Contracts for General Building Services, Electrical Services, Mechanical Services, and Roofing Services will support expediting the completion of Sheriff-Coroner Department's repair, remodeling, rehabilitation and maintenance projects, and improve public safety and customer service.

BACKGROUND INFORMATION:

On June 29, 2010, the Board of Supervisors (Board) approved the establishment of a Job Order Contracting (JOC) Program to expedite completion of maintenance, repair, rehabilitation and remodel projects involving existing County of Orange (County) facilities. The JOC Program includes a competitive public works bidding process based on a price adjustment factor that is multiplied by the unit prices of materials, equipment and labor. These unit prices are listed in the JOC Construction Task Catalog and Technical Specifications established by the County's consultant, The Gordian Group, Inc. (Gordian), as part of the bid documents. Gordian has developed the necessary bid documents to seek contractors for public works projects. These documents include the technical specifications and prices for each task; the general JOC requirements, conditions and details; the JOC Agreement; Notice to Contractors; and the Bid Proposal Form. The documents are all currently on file with the Clerk of the Board and have been in use with other County departments since 2010.

On August 23, 2022, the Board adopted the April 2022 Construction Task Catalog and Technical Specifications prepared by Gordian. The Board also adopted the Pre-Qualification List of twenty (20) prequalified contractors (Attachment R). Additionally, the Board approved the bid documents for use with the JOC program to procure General Building Services, Electrical Services, Mechanical Services, and Roofing Services and authorized the advertisement for bids. The bid documents were advertised in several industry publications and on the County's online bid system. Contractors were required to have submitted and passed the pre-qualification for the bid, which took place in April, and included reviews of information on past performance on County projects, review of references, and financial statements. Contractors must have pre-qualified and been on the Board-adopted pre-qualified list (Attachment R) to submit a proposal for the bid. Bid Summaries are included as Attachment Q.

On September 21, 2022, a total of 16 bids were received (Attachment Q). Sheriff has conducted its due diligence with regard to the contractors. Reference checks were completed and deemed satisfactory, which included a review of performance on past projects. The contractors' license numbers of the recommended lowest, responsible bidders were verified as current and active at Bid Opening, through the California Contractors State License Board database on September 22, 2022. Copies of the verifications are on file. Contractors recommended for awarded contracts were all on the Board-approved prequalified list to perform the needed services (Attachment R). The Orange County Preference Policy is not applicable to these contract awards.

The purpose of the JOC program is to expedite services as defined by the California Contractors State Licensing Board for maintenance and repair work involving health, safety and mandated projects. These projects include major and minor repairs and replacements, as requested by Sheriff's end-users. The current JOC contracts, approved by the Board on August 24, 2021, had an expiration of September 21, 2022, however, Sheriff extended terms until March 20, 2023, for the sole purpose of completing work on projects already ordered prior to the expiration of the original term. Pursuant to the County's Design and Construction Procurement Policy Manual, during this extension period, no new task orders are allowed to be issued and the sole purpose is to complete work that has already commenced. In order to maintain a continuity of services, a new slate of JOCs is necessary.

After bids were opened, Sheriff determined that it is in its best interest to award multiple contracts to ensure the maximum flexibility, while minimizing the potential for delays in delivering JOC eligible projects. Of the various County agencies, Sheriff has the most contractor requirements including protocols for access to its secured facilities, which requires each contract employee to pass a background screening. Having multiple vendors ensures availability of qualified and security-cleared workers when a project is identified.

Sheriff is requesting Board approval to award Job Order Contracts to the firms listed in the Recommended Actions. The cumulative maximum capacity for the 16 contracts will not exceed a total of \$80 million over their respective one-year terms.

Subcontractors, if utilized, are not listed until the receipt of price quotations from the contractor with each issued JOC task order. See Attachment S for information on subcontractors and Contract Summary Forms.

These contracts are submitted for Board approval less than 30 days prior to their effective date because there is an immediate need for the services to be provided.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA since it does not have the potential for resulting in either a direct or physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since it involves fiscal activities of government that is not committed to any specific

project, which may result in a potentially significant physical impact to the environment. This proposed activity is therefore not subject to CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA.

FINANCIAL IMPACT:

There is no financial impact associated with these Recommended Actions. The funding source of each project will vary depending on the nature of the project. Routine maintenance projects will be funded from Budget Control 060, Sheriff-Coroner. Construction and facilities development projects are/will be included in Fund 14Q, Sheriff-Coroner Construction and Facility Development and will be potentially funded from Budget Control 060, Sheriff-Coroner or Budget Control 15D, Countywide Capital Projects Non-General Fund.

The cumulative not to exceed value of the proposed 16 contracts has been set to allow for maximum use. Sheriff will have discretionary authority to allow excess capacity within the 16 contracts' maximum threshold to be made available for utilization by other requesting agencies within the County.

The contracts include a provision stating the contracts are subject to, and contingent upon, applicable budgetary appropriations being approved by the Board for each fiscal year during the term of the contracts. If such appropriations are not approved, these contracts may be terminated without penalty to the County.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

- Attachment A – Contract MA-060-23010429 with CTG Construction, Inc. dba C.T. Georgiou Painting Co.
- Attachment B – Contract MA-060-23010430 with Dalke & Sons Construction, Inc.
- Attachment C – Contract MA-060-23010431 with Horizons Construction Company International, Inc.
- Attachment D – Contract MA-060-23010432 with MIK Construction Inc.
- Attachment E – Contract MA-060-23010433 with MTM Construction, Inc.
- Attachment F – Contract MA-060-23010434 with New Creation Engineering & Builders, Inc. dba New Creation Builders
- Attachment G – Contract MA-060-23010435 with PUB Construction, Inc.
- Attachment H – Contract MA-060-23010436 with SJD&B, Inc.
- Attachment I – Contract MA-060-23010437 with Vincor Construction, Inc.
- Attachment J – Contract MA-060-23010438 with Baker Electric & Renewables LLC dba Baker Electric
- Attachment K – Contract MA-060-23010439 with Federal Technology Solutions, Inc.
- Attachment L – Contract MA-060-23010440 with Mel Smith Electric, Inc.
- Attachment M – Contract MA-060-23010441 with ABM Building Solutions, LLC
- Attachment N – Contract MA-060-23010442 with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
- Attachment O – Contract MA-060-23010443 with AME Builders Inc dba AME Roofing
- Attachment P – Contract MA-060-23010444 with Commercial Waterproofing Systems, Inc. dba ERC Roofing & Waterproofing
- Attachment Q – Bid Summaries
- Attachment R – Board Approved Pre-Qualification List
- Attachment S – Contract Summary Forms

JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **CTG Construction, Inc. dba C.T. Georgiou Painting Co.** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.

Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.

- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
 - K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
 - L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - M. County Project Manager will issue JOC Task Order if required.
 - N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.

6. **Contractor:**

- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: CTG Construction, Inc. dba C.T. Georgiou Painting Co.
Attn: Costas Georgiou
433 Lecouvreur Avenue,
Wilmington, CA 90744
(310)834-8015
gus@ctgconstruction.net

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. **Substantial Completion:**

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

CTG Construction, Inc. dba C.T. Georgiou Painting Co.
a California Corporation

Date: 10/3/2022 | 11:31:10 AM PDT

By Costas Georgiou President

Costas Georgiou
Print Name & Title

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

Date: 10/3/2022 | 1:01:19 PM PDT

By Maria Georgiou Secretary/Treasurer

Maria Georgiou
Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/3/2022 | 1:06:28 PM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9000

Utilize four decimal places

Zero point nine zero zero zero
 For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9100

Utilize four decimal places

Zero point nine one zero zero
 For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.2000

Utilize four decimal places

One point two zero zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9000</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3600</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.9100</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2730</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.2000</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3600</u>
Line 7: Add Lines 2, 4 and 6	<u>0.9930</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **Dalke & Sons Construction, Inc.** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog[®].
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog[®] (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.

Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.

- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
 - K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
 - L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - M. County Project Manager will issue JOC Task Order if required.
 - N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.

6. **Contractor:**

- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy:**
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
 - b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
 - c. For purposes of this section:
 1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - C. Payment of an amount that is disputed by the public entity.
 2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: Dalke & Sons Construction, Inc.
Attn: Barry Dalke
4585 Allstate Drive
Riverside, CA 92501
(951)274-9880
barry@dalkeandsons.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state *AS REQUIRED BY WRITTEN CONTRACT* when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

**Orange County Sheriff-Coroner Department
Dalke & Sons Construction, Inc.**

**Attachment B
MA-060-23010430**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Dalke & Sons Construction, Inc.
a California Corporation

Date: 10/4/2022 | 8:57:37 AM PDT

By Barry Dalke

Barry Dalke Vice President
Print Name & Title

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

Date: 10/4/2022 | 9:05:05 AM PDT

By Calvin Dalke, Jr.

Calvin Dalke, Jr. Secretary/Treasurer
Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 9:18:03 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. **Pre-Priced Work requirements**: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.

A copy of these documents may be found on the internet at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

- e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

- i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9683

Utilize four decimal places

Zero point nine six eight three
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9903

Utilize four decimal places

Zero point nine nine zero three
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.1503

Utilize four decimal places

One point one five zero three

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9683</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3873</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.9903</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2971</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.1503</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3451</u>
Line 7: Add Lines 2, 4 and 6	<u>1.0295</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **Horizons Construction Company International, Inc.**, (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.

Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.

- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
 - K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
 - L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - M. County Project Manager will issue JOC Task Order if required.
 - N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.

6. **Contractor:**

- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.

33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: Horizons Construction Company International, Inc.
Attn: Kinan Kotrash
432 W. Meats Avenue
Orange, CA 92865
(714)626-0000
Yazmin@Horizonscci.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state *AS REQUIRED BY WRITTEN CONTRACT* when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

- confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Horizons Construction Company International, Inc.
a California Corporation

Date: 10/3/2022 | 11:38:51 AM PDT

By Kinan Kotrash Secretary

kinan kotrash

Print Name & Title

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

Date: 10/3/2022 | 12:33:00 PM PDT

By Kinan Kotrash Vice president

kinan kotrash

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: *Jeffrey Stock*

Jeffrey Stock, Deputy County Counsel

Date: 10/3/2022 | 12:39:06 PM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

- e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

- i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.8500

Utilize four decimal places

Zero point eight five zero zero
 For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.8600

Utilize four decimal places

Zero point eight six zero zero
 For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.0500

Utilize four decimal places

One point zero five zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.8500</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3400</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.8600</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2580</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.0500</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3150</u>
Line 7: Add Lines 2, 4 and 6	<u>0.9130</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **MIK Construction Inc.**, (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy:**
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
 - b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
 - c. For purposes of this section:
 1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - C. Payment of an amount that is disputed by the public entity.
 2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: MIK Construction Inc.
Attn: Billy Kim
8022 Westman Avenue
Whittier, CA 90606
(562)941-2400
billykim@mikinc.us

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

Orange County Sheriff-Coroner Department
MIK Construction Inc.

Attachment D
MA-060-23010432

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

MIK Construction Inc.
a California Corporation

Date: 10/4/2022 | 9:52:37 AM PDT

By Billy Kim President

Billy Kim
Print Name & Title

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

Date: 10/4/2022 | 9:53:38 AM PDT

By Billy Kim

Billy Kim Secretary
Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 10:07:15 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B**CONTRACTOR'S PRICING BID FORM**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9400

Utilize four decimal places

Zero point nine four zero zero
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9401

Utilize four decimal places

Zero point nine four zero one
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.1000

Utilize four decimal places

One point one zero zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9400</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3760</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.9401</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2820</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.1000</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3300</u>
Line 7: Add Lines 2, 4 and 6	<u>0.9880</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

**JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES**

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **MTM Construction, Inc.**, (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog[®].
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog[®] (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.

Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.

- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
 - K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
 - L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - M. County Project Manager will issue JOC Task Order if required.
 - N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.

6. **Contractor:**

- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy:**
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
 - b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
 - c. For purposes of this section:
 1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - C. Payment of an amount that is disputed by the public entity.
 2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: MTM Construction, Inc.
Attn: Michelle Lee
16035 Phoenix Drive
City of Industry, CA 91745
(626)934-1112
michellelee@mtminc.us

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

MTM Construction, Inc.
a California Corporation

Date: 10/3/2022 | 10:18:54 AM PDT

By Hac Song Lee PRESIDENT

Hac Song Lee

Print Name & Title

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

Date: 10/4/2022 | 11:01:54 AM PDT

By Stella H. Nam

Stella H. Nam Secretary

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: 

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 11:25:46 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9100

Utilize four decimal places

Zero point nine one zero zero
 For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9101

Utilize four decimal places

Zero point nine one zero one
 For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.1000

Utilize four decimal places

One point one zero zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9100</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3640</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.9101</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2730</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.1000</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3300</u>
Line 7: Add Lines 2, 4 and 6	<u>0.9670</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **New Creation Engineering & Builders, Inc. dba New Creation Builders** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.

Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.

- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
 - K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
 - L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - M. County Project Manager will issue JOC Task Order if required.
 - N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.

6. **Contractor:**

- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
 - b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
 - c. For purposes of this section:
 1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - C. Payment of an amount that is disputed by the public entity.
 2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
 Orange County Sheriff-Coroner Department
 431 The City Drive South
 Orange, CA 92868

Contractor: New Creation Engineering & Builders, Inc. dba New Creation Builders
 Attn: Cecilia Mejia
 17809 Clark Ave
 Bellflower, CA 90706
 (562)804-0478 ext. 107
 cl@newcreationbuilders.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state *AS REQUIRED BY WRITTEN CONTRACT* when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

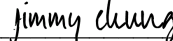
81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

New Creation Engineering & Builders, Inc. dba
New Creation Builders
a California Corporation

Date: 10/5/2022 | 9:54:11 AM PDT

By 

jimmy chung president
Print Name & Title

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

Date: 10/5/2022 | 9:58:19 AM PDT

By 

Thomas Ryu Secretary
Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: 

Jeffrey Stock, Deputy County Counsel

Date: 10/5/2022 | 10:05:13 AM PDT

ATTACHMENT A
SCOPE OF WORK

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.

A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

- e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

- i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9800

Utilize four decimal places

Zero point nine eight zero zero
 For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.0000

Utilize four decimal places

One point zero zero zero zero
 For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.0700

Utilize four decimal places

One point zero seven zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9800</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3920</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.0000</u>
Line 4: Multiply Line 3 by (30) %	<u>0.3000</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.0700</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3210</u>
Line 7: Add Lines 2, 4 and 6	<u>1.0130</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

**JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES**

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **PUB Construction, Inc.** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.

Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.

- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
 - K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
 - L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - M. County Project Manager will issue JOC Task Order if required.
 - N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.

6. **Contractor:**

- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy:**
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
 Orange County Sheriff-Coroner Department
 431 The City Drive South
 Orange, CA 92868

Contractor: PUB Construction, Inc.
 Attn: Chris Yi
 23545 Palomino Drive, #104
 Diamond Bar, CA 91765
 (909)455-0187
 chris.yi@pubconstruction.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

54. Termination for Convenience of the County: Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

PUB Construction, Inc.
a California Corporation

Date: 10/3/2022 | 3:12:53 PM CDT

By Chris Yi

Chris Yi President
Print Name & Title

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

Date: 10/3/2022 | 1:37:47 PM PDT

By Chris Yi

Chris Yi President
Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 10:06:27 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. **Pre-Priced Work requirements**: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

- e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

- i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B**CONTRACTOR'S PRICING BID FORM**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9600

Utilize four decimal places

Zero point nine six zero zero

For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9650

Utilize four decimal places

Zero point nine six five zero

For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

0.9700

Utilize four decimal places

Zero point nine seven zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSD put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9600</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3840</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.9650</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2895</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>0.9700</u>
Line 6: Multiply Line 5 by (30) %	<u>0.2910</u>
Line 7: Add Lines 2, 4 and 6	<u>0.9645</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **SJD&B, Inc.** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.

43. **Beneficial Occupancy:**

- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: SJD&B, Inc.
Attn: Sabrina Wan
20451 Valley Blvd
Walnut, CA 91789
(909) 481-0001
info@sjdandb.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

Orange County Sheriff-Coroner Department
SJD&B, Inc.

Attachment H
MA-060-23010436

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

SJD&B, Inc.
a California Corporation

Date: 10/4/2022 | 7:49:54 AM PDT

By Simon Jeon

Simon Jeon President
Print Name & Title

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

Date: _____

By _____

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: 

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 9:13:14 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.

A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

- e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

- i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B**CONTRACTOR'S PRICING BID FORM**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9700

Utilize four decimal places

Zero point nine seven zero zero

For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.0200

Utilize four decimal places

One point zero two zero zero

For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.2200

Utilize four decimal places

One point two two zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSD put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9700</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3880</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.0200</u>
Line 4: Multiply Line 3 by (30) %	<u>0.3060</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.2200</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3660</u>
Line 7: Add Lines 2, 4 and 6	<u>1.0600</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

**JOB ORDER CONTRACT (JOC)
FOR
GENERAL BUILDING SERVICES**

This Job Order Contract (JOC) for General Building Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **Vincor Construction, Inc.** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for General Building Services under a Usage Contract; and,

WHEREAS, County solicited General Building Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Building Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Building Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Building Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. Division of the Specifications:

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. Site Conditions:

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy:**
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: Vincor Construction, Inc.
Attn: Vincent Cortes
2651 Saturn Street
Brea, CA 92821
(714) 528-2900
vincent@vincorinc.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Vincor Construction, Inc.
a California Corporation

Date: 10/3/2022 | 7:08:21 PM PDT

By Vincent Cortes

Vincent Cortes President
Print Name & Title

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

Date: 10/4/2022 | 8:40:55 AM PDT

By Michele Cortes

Michele Cortes Corporate Secretary
Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: 

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 9:17:24 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide General Building Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. General Building Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog[®]
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class B (General Building) Contractor's license issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for General Building Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9400

Utilize four decimal places

Zero point nine four zero zero
 For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9400

Utilize four decimal places

Zero point nine four zero zero
 For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.0800

Utilize four decimal places

One point zero eight zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9400</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3760</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>0.9400</u>
Line 4: Multiply Line 3 by (30) %	<u>0.2820</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.0800</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3240</u>
Line 7: Add Lines 2, 4 and 6	<u>0.9820</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full

compliance with this provision herein. The Contractor must submit a completed invoice to the County for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an

acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated

litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
ELECTRICAL SERVICES

This Job Order Contract (JOC) for Electrical Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and **Baker Electric & Renewables LLC dba Baker Electric** (hereinafter referred to as “Contractor”), which are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Electrical Services under a Usage Contract; and,

WHEREAS, County solicited Electrical Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Electrical Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Electrical Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder’s competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Electrical Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.

33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. **Omissions and Mis-descriptions:** Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. **Conflicting Information:** In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. **Drawings and Specifications at the Site:** The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. **Deviations:** Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. **Technical Specifications:** The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. **Facility Security:** Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. **Security System:** The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. **Secured Facilities:** For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. **Employee Acceptability:** If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy:**
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
 Orange County Sheriff-Coroner Department
 431 The City Drive South
 Orange, CA 92868

Contractor: Baker Electric & Renewables LLC dba Baker Electric
 Attn: Monica Alvarado / Harold Carlisle
 1298 Pacific Oaks Place
 Escondido, CA 92029
 (760)745-2001
 malvarado@baker-electric.com / hcarlisle@baker-electric.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Baker Electric & Renewables LLC dba Baker Electric
a Limited Liability Company

Date: 10/4/2022 | 1:34:05 PM PDT

By Ted Baker

Ted Baker President

Print Name & Title

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

Date: 10/4/2022 | 3:47:46 PM CDT

By Brian Miliate

Brian Miliate, CFO

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 2:00:08 PM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Electrical Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Electrical Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog[®] & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in force. Performance time for each JOC Task Order issued under this Contract will be determined in

accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for

approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced

is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.
 3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.

4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the

County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered, approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the

appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.

- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed
 - a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface

- Waters, Order No. R8-2009-0003, NPDES No. CAG998001 (“General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
- b. A copy of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WQ2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project’s Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)
 - xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
 - xiv. Locations of all post construction BMPs
 - xv. Location of storage areas for waste, vehicles, service, loading/unloading of

materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map
- 2) EPA Rainfall Erosivity Factor Calculator Website
- 3) Sediment Risk interactive map
- 4) Sediment sensitive water bodies list

- ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
- g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
- h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).

P. Best Management Practices (PMF9.2S)

Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.

Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class C-10 (Electrical) Contractor's license issued by the California State Contractor's License Board.
- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.

- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.
- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of

the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.

- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered

to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of

delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B**CONTRACTOR'S PRICING BID FORM**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Electrical Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.3997

Utilize four decimal places

One point three nine nine seven
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.5396

Utilize four decimal places

One point five three nine six
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.8355

Utilize four decimal places

One point eight three five five

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSD put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>1.3997</u>
Line 2: Multiply Line 1 by (40) %	<u>0.5599</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.5396</u>
Line 4: Multiply Line 3 by (30) %	<u>0.4619</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.8355</u>
Line 6: Multiply Line 5 by (30) %	<u>0.5506</u>
Line 7: Add Lines 2, 4 and 6	<u>1.5724</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

**JOB ORDER CONTRACT (JOC)
FOR
ELECTRICAL SERVICES**

This Job Order Contract (JOC) for Electrical Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **Federal Technology Solutions, Inc.** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Electrical Services under a Usage Contract; and,

WHEREAS, County solicited Electrical Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Electrical Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Electrical Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Electrical Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.

43. **Beneficial Occupancy:**

- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: Federal Technology Solutions, Inc.
Attn: Mark Jaeckel
1828 Railroad Street
Corona, CA 92880
(951) 808-9660 / (949) 812-2399
markj@federalsales.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. **Substantial Completion:**

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

**Orange County Sheriff-Coroner Department
Federal Technology Solutions, Inc.**

**Attachment K
MA-060-23010439**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Federal Technology Solutions, Inc.
a California Corporation

Date: 10/3/2022 | 10:42:50 AM PDT

By Jacques A. Manciet
Jacques A Manciet President

Print Name & Title

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

Date: 10/3/2022 | 11:07:30 AM PDT

By Jacques A. Manciet
Jacques A Manciet Secretary

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____
Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: Jeffrey Stock
Jeffrey Stock, Deputy County Counsel

Date: 10/3/2022 | 11:36:49 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Electrical Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Electrical Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in force. Performance time for each JOC Task Order issued under this Contract will be determined in

accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for

approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced

is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.
 3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.

4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the

County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered, approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the

appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.

- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed
 - a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface

- Waters, Order No. R8-2009-0003, NPDES No. CAG998001 (“General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
- b. A copy of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WQ2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.

A copy of these documents may be found on the internet at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project’s Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)
 - xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
 - xiv. Locations of all post construction BMPs
 - xv. Location of storage areas for waste, vehicles, service, loading/unloading of

materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map
- 2) EPA Rainfall Erosivity Factor Calculator Website
- 3) Sediment Risk interactive map
- 4) Sediment sensitive water bodies list

- ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contactor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class C-10 (Electrical) Contractor's license issued by the California State Contractor's License Board.
- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.

- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.
- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of

the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.

- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered

to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of

delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Electrical Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.4113

Utilize four decimal places

One point four one one three
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.4291

Utilize four decimal places

One point four two nine one
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.4500

Utilize four decimal places

One point four five zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>1.4113</u>
Line 2: Multiply Line 1 by (40) %	<u>0.5645</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.4291</u>
Line 4: Multiply Line 3 by (30) %	<u>0.4287</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.4500</u>
Line 6: Multiply Line 5 by (30) %	<u>0.4350</u>
Line 7: Add Lines 2, 4 and 6	<u>1.4282</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

**JOB ORDER CONTRACT (JOC)
FOR
ELECTRICAL SERVICES**

This Job Order Contract (JOC) for Electrical Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and *Mel Smith Electric, Inc.* (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Electrical Services under a Usage Contract; and,

WHEREAS, County solicited Electrical Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Electrical Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Electrical Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Electrical Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.

33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County’s Project Manager and Contractor’s Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: Mel Smith Electric, Inc.
Attn: Roy Profitt
10950 Dale Avenue
Stanton, CA 90680
(714)761-3205
estimating@melsmithelectric.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Mel Smith Electric, Inc.
a California Corporation

Date: 10/3/2022 | 12:10:19 PM PDT

By Mel Smith
Mel Smith, President

Print Name & Title

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

Date: 10/3/2022 | 12:10:19 PM PDT

By Mel Smith
Mel Smith, Chief Financial Officer

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____
Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: Jeffrey Stock
Jeffrey Stock, Deputy County Counsel

Date: 10/3/2022 | 12:23:07 PM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Electrical Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Electrical Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in force. Performance time for each JOC Task Order issued under this Contract will be determined in

accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for

approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced

is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.
 3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.

4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the

County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered, approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the

appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.

- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed
 - a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface

- Waters, Order No. R8-2009-0003, NPDES No. CAG998001 (“General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
- b. A copy of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WQ2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project’s Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)
 - xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
 - xiv. Locations of all post construction BMPs
 - xv. Location of storage areas for waste, vehicles, service, loading/unloading of

materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map
- 2) EPA Rainfall Erosivity Factor Calculator Website
- 3) Sediment Risk interactive map
- 4) Sediment sensitive water bodies list

- ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
- g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
- h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).

P. Best Management Practices (PMF9.2S)

Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.

Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class C-10 (Electrical) Contractor's license issued by the California State Contractor's License Board.
- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.

- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.
- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of

the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.

- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered

to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of

delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Electrical Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.4300

Utilize four decimal places

One point four three zero zero
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.4600

Utilize four decimal places

One point four six zero zero
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.4900

Utilize four decimal places

One point four nine zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSD put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>1.4300</u>
Line 2: Multiply Line 1 by (40) %	<u>0.5720</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.4600</u>
Line 4: Multiply Line 3 by (30) %	<u>0.4380</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.4900</u>
Line 6: Multiply Line 5 by (30) %	<u>0.4470</u>
Line 7: Add Lines 2, 4 and 6	<u>1.4570</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

**JOB ORDER CONTRACT (JOC)
FOR
MECHANICAL SERVICES**

This Job Order Contract (JOC) for Mechanical Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and *ABM Building Solutions, LLC* (hereinafter referred to as “Contractor”), which are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Mechanical Services under a Usage Contract; and,

WHEREAS, County solicited Mechanical Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Mechanical Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Mechanical Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder’s competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Mechanical Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.
- The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.
- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.

33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: ABM Building Solutions, LLC
Attn: Theresa Wapato
14201 Franklin Ave.
Tustin, CA 92780
(949) 330-1556
Theresa.wapato@abm.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

ABM Building Solutions, LLC
a Limited Liability Company

Date: 10/4/2022 | 2:49:12 PM PDT

By Eugenio Burnier
Eugenio Burnier, SVP ATS

Print Name & Title

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

Date: 10/4/2022 | 3:52:44 PM PDT

By Noah Becker
Noah Becker, Assistant Corporate Secretary

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____
Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: Jeffrey Stock
Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 4:18:28 PM PDT

ATTACHMENT A
SCOPE OF WORK

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Mechanical Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Mechanical Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
 A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess current State of California Class C-4 (Boiler, Hot Water Heating and Steam Fitting), C-20 (Warm-Air Heating, Ventilation and Air Conditioning), AND C-36 (Plumbing) Contractor's licenses issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B**CONTRACTOR'S PRICING BID FORM**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Mechanical Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

0.9499

Utilize four decimal places

Zero point nine four nine nine
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.1828

Utilize four decimal places

One point one eight two eight
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.2593

Utilize four decimal places

One point two five nine three

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSD put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>0.9499</u>
Line 2: Multiply Line 1 by (40) %	<u>0.3800</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.1828</u>
Line 4: Multiply Line 3 by (30) %	<u>0.3548</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.2593</u>
Line 6: Multiply Line 5 by (30) %	<u>0.3778</u>
Line 7: Add Lines 2, 4 and 6	<u>1.1126</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)
FOR
MECHANICAL SERVICES

This Job Order Contract (JOC) for Mechanical Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and **Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy** (hereinafter referred to as “Contractor”), which are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Mechanical Services under a Usage Contract; and,

WHEREAS, County solicited Mechanical Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Mechanical Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Mechanical Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder’s competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Mechanical Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCSO) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCSO, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
 Orange County Sheriff-Coroner Department
 431 The City Drive South
 Orange, CA 92868

Contractor: Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
 Attn: Aaron Fletcher
 2 Cromwell
 Irvine, CA 92618
 (949) 254-3114
 afletcher@emcor.net

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. **Substantial Completion:**

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

**Mesa Energy Systems, Inc. dba
EMCOR Services Mesa Energy**
a California Corporation

Date: 10/3/2022 | 11:50:35 AM EDT

By Steve Hunt

Stephen P Hunt, CFO

Print Name & Title

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

Date: 10/3/2022 | 3:31:35 PM PDT

By David Geith

David Geith, VP of Service

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 9:10:14 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Mechanical Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Mechanical Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog[®] & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in

force. Performance time for each JOC Task Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified

and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other

documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.

3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have

been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered,

approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.

- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed

- a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG998001 ("General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
 - b. A copy of the County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WO2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a

complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)

- xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
- xiv. Locations of all post construction BMPs
- xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedul es2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

- e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

- i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map

- 2) EPA Rainfall Erosivity Factor Calculator Website
 - 3) Sediment Risk interactive map
 - 4) Sediment sensitive water bodies list
 - ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
 - g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
 - h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).
- P. Best Management Practices (PMF9.2S)
- Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
- Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.
- Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess current State of California Class C-4 (Boiler, Hot Water Heating and Steam Fitting), C-20 (Warm-Air Heating, Ventilation and Air Conditioning), AND C-36 (Plumbing) Contractor's licenses issued by the California State Contractor's License Board.

- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The

Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to,

Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Mechanical Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.3955

Utilize four decimal places

One point three nine five five
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.7375

Utilize four decimal places

One point seven three seven five
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

2.2587

Utilize four decimal places

Two point two five eight seven

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSD put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>1.3955</u>
Line 2: Multiply Line 1 by (40) %	<u>0.5582</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.7375</u>
Line 4: Multiply Line 3 by (30) %	<u>0.52125</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>2.2587</u>
Line 6: Multiply Line 5 by (30) %	<u>0.6776</u>
Line 7: Add Lines 2, 4 and 6	<u>1.7570</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)

FOR

ROOFING SERVICES

This Job Order Contract (JOC) for Roofing Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **AME Builders Inc dba AME Roofing** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Roofing Services under a Usage Contract; and,

WHEREAS, County solicited Roofing Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Roofing Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Roofing Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Roofing Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.
- The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.
- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

- loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
 11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
 12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
 13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
 14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
 15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.

33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: AME Builders Inc dba AME Roofing
Attn: Don Seo
1242 Transit Ave.,
Pomona, CA 91766
(714) 719-4223
don.seo@amebuilders.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

- confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

AME Builders Inc dba AME Roofing
a California Corporation

Date: 10/4/2022 | 8:18:24 AM PDT

By Don Seo

Don Seo, President

Print Name & Title

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

Date: 10/4/2022 | 8:25:17 AM PDT

By Junghee Seo

Junghee Seo, Secretary

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Jeffrey Stock

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 9:10:55 AM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Roofing Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Roofing Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog® & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in force. Performance time for each JOC Task Order issued under this Contract will be determined in

accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for

approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced

is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.
 3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.

4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the

County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered, approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the

appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.

- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed
 - a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface

- Waters, Order No. R8-2009-0003, NPDES No. CAG998001 (“General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
- b. A copy of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WQ2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project’s Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)
 - xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
 - xiv. Locations of all post construction BMPs
 - xv. Location of storage areas for waste, vehicles, service, loading/unloading of

materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map
- 2) EPA Rainfall Erosivity Factor Calculator Website
- 3) Sediment Risk interactive map
- 4) Sediment sensitive water bodies list

- ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
- g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
- h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).

P. Best Management Practices (PMF9.2S)

Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.

Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class C-39 (Roofing) Contractor's license issued by the California State Contractor's License Board.
- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.

- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.
- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of

the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.

- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered

to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of

delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Roofing Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.1500

Utilize four decimal places

One point one five zero zero

For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.2000

Utilize four decimal places

One point two zero zero zero

For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCSD Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

JOB ORDER CONTRACT (JOC)

FOR

ROOFING SERVICES

This Job Order Contract (JOC) for Roofing Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and **Commercial Waterproofing Systems, Inc. dba ERC Roofing & Waterproofing** (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Roofing Services under a Usage Contract; and,

WHEREAS, County solicited Roofing Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Roofing Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Roofing Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DEFINITIONS: The following terms shall have the definitions as set forth below:

1. **Adjustment Factor:** The Bidder's competitively bid price adjustment to the Unit Prices published in the Construction Task Catalog®.
2. **Award Criteria Figure:** The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Brief Scope of Work:** The initial scope of Work developed by the County Project Manager, and is utilized to provide adequate information to schedule the Joint Scope Meeting.
4. **Best Management Practices (BMPs):** As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. Specific BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
5. **Construction Task Catalog® (CTC):** A comprehensive listing of specific construction related tasks identified by the County together with a specified unit of measurement and Unit Price. The price published in the CTC for a specific construction or construction-related task. The Unit Prices are fixed for the Term of this Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.

6. DAMP/LIP: To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP), which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to.
7. Detailed Scope of Work: The complete description of services to be provided by the Contractor under an individual JOC Task Order (JTO). Developed by the Contractor, after the Joint Scope Meeting and submitted for approval to the County Project Manager.
8. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific JOC Task Order, and these items have been accepted and approved by the County
9. JOC Task Order Authorization (JTOA): Issued upon acceptance of quote and the duration schedule, stating that the JOC Task Order Price Proposal is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.
10. JOC Task Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
11. JOC Task Order Notice To Proceed (NTP): The document prepared by the County, based on the approved JOC Task Order Quote, and issued to the Contractor which provides the specific instructions, specific bid items, and the duration to complete the approved Detailed Scope of Work. A written notice issued by the County directing the Contractor to proceed with construction activities to complete the JOC Task Order.
12. JOC Task Order Price: The value of the approved JOC Task Order Price Proposal and the amount the Contractor will be paid for completing a JOC Task Order.
13. JOC Task Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
14. JOC Task Order Proposal (Proposal): Contractor's irrevocable offer to perform Work associated with a JOC Task Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's JOC Task Order Proposal must be on forms provided by the County and in an electronic version compatible with the County's systems. The JOC Task Order Proposal may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific JOC Task Order.
15. Joint Scope Meeting: A meeting at the JOC Task Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the JOC Task Order.
16. Maximum Contract Value: The maximum value of JOC Task Orders that the Contractor may receive under this Contract.
17. Non Pre-Priced (NPP) Tasks: The units of Work that are not included in the CTC but are still within the general Scope of Work requested by the County under the Contract.
18. Normal Working Hours: means Work done between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
19. Other Than Normal Working Hours: means Work done between the hours of 5:01 PM to 6:59 AM, on week days and any times during Saturdays, Sundays, and County holidays.

20. Normal Working Hours and Other Than Normal Working Hours in Secured Facilities: means Work done in Secured Facilities between the hours of 12:00 AM to 12:00 PM, on week days and any times during Saturdays, Sundays, and County holidays.
21. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].
22. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual JOC Task Orders.
23. Request for Proposal (RFP): The County's written Request for Proposal to the Contractor for a specific JOC Task Order.
24. Secured Facilities: Inside one of the five OCSD, jail facilities: Intake Release Center (IRC), Theo Lacy Facility (TLF), James A. Musick Facility (JAMF), Central Men's Jail (CMJ), and/or Central Women's Jail (CWJ). Note: when selecting an adjustment factor, the Secured Facilities factor may only be applied after approval by the Orange County Sheriff's Department Project Manager.
25. Storm water Permit: The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("Stormwater Permits") to the County of Orange, the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including from all County facilities on which Work within Contract is being performed. These permits are referred to as Stormwater Permits.
26. Supplemental JOC Task Order: A secondary JOC Task Order developed after the initial JOC Task Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the JOC Task Order Completion Time.
27. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
28. Unit Price: The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
29. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Roofing Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** This Contract shall become effective October 18, 2022 if all necessary signatures have been executed by that date, or upon execution of all necessary signatures if execution occurs after October 18, 2022, and shall continue for one (1) year from said date or execution, whichever is later, or until the total Contract amount is reached, or unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **County's Representatives:**
 - A. The Contract will be under the general direction of the Board of Supervisors. Orange County Sheriff-Coroner Department (OCS D) is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the Contract, and shall exercise full control of the Contract, so far as it affects the interest of the County.
 - B. The provisions in this Article or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OCS D, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the Work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.
 - C. County's Contract Administrator is the County's exclusive contact agent to the Contractor with respect to this Contract during construction and until the completion of the Contract. The County will assign Project Managers for individual JOC Task Orders. The County may utilize the services of an Architect in relation to some, but not all JOC Task Orders.
 - D. The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager.
 - E. County Project Manager shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
 - F. The County and County Project Manager shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract documents.
 - G. The County and County Project Manager shall not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate with others separate Contractors.

- H. The County will not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- I. County Project Manager has the authority to disapprove or reject Work on behalf of the County when, in the County Project Manager's opinion, the Work does not conform to the Contract documents.
- Whenever, in County Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract documents, County Project Manager has the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract documents whether or not such Work shall then be fabricated, installed or completed.
- J. County Project Manager has the authority to require special inspection or testing of the Work. However, neither County Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any Subcontractor, or any of their agents, or employees, or any other person performing any portion of the Work.
- K. County Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.
- L. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
- M. County Project Manager will issue JOC Task Order if required.
- N. County Project Manager will review and process all Invoices by the Contractor.
5. **Architect-Engineer status (A-E)**
- A. If an A-E is hired by the County to provide any design services for a specific JOC Task Order as indicated in the JOC Task Order, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of the A-E contract. The services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed The A-E does not have the authority to act for the County or the County's Project Manager, or to stop the work.
6. **Contractor:**
- A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. Review Documents: The contractor shall carefully study and compare all drawings, specifications, and other instructions to identify any errors, inconsistencies, omissions, ambiguities, interference, etc., and shall, at once, report to the County's Project Manager any and all errors, inconsistencies, omissions, ambiguities, interference, etc., in a timely manner, before it is a problem. The contractor is responsible for all such problems, which are known or should have discovered by a reasonably diligent review, and performance, which are known or should have known is inconsistent with the general design concept or with industry standards. Except as otherwise specifically provided hereinafter under warranties, Contractor shall not be an agent for the County.

- C. **Superintendence:** The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the Work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the Work required for the total project, all satisfactory to County Project Manager.

The superintendent shall not be changed except with consent of County Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within twenty-four (24) hours by a superintendent acceptable to County Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision, the County may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$150 per hour for such effort.

- D. **Licenses and Certificates:** Contractor shall, at all times during the term of this Contract, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Contract. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.
- E. **Superintendent and County Project Manager:** The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.
7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
9. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; Subcontractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative Work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative Work or furnished materials shall be used by the Contractor without the express written consent of the County.
11. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of Work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one (1) business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art Work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in

any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any Subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

17. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract.

The Contractor shall maintain records for all costs connected with the performance of this Contract including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

18. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents, damage, or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County's directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and Work performed until

completion and acceptance of the entire construction Work, except for any completed unit of construction thereof, which theretofore may have been accepted.

19. **Conditions Affecting the Work:** The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof for any JOC Task Order. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
20. **County's Property On Site:** All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the Parties, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the County.
21. **Protection:** The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and Work performed until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which until completion and acceptance of the entire construction Work, except for any completed unit of construction thereof which theretofore may have been accepted.

The Contractor shall maintain continuously adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or representatives of the County. Contractor shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to Orange County Sheriff-Coroner Department. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by Orange County Sheriff-Coroner Department while on the job site.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by Orange County Sheriff-Coroner Department. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

Orange County Sheriff-Coroner Department may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from Orange County Sheriff-Coroner Department shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, Orange County Sheriff-Coroner Department may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of

time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his Subcontractors comply with the provisions of this Clause.

22. **Responsibility For Damages Or Injury:** The County elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Project or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Project; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Project or at any time before its completion and final acceptance.

The Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County Indemnitees from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the Project or by or in consequence of any negligence in guarding the Project; use of improper materials in construction of the Project; or by or on account of any act or omission by the Contractor or his agents during the progress of the Work or at any time before the completion and final acceptance of the Project.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County and County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

23. **Other Contracts:** The Board of Supervisors may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own Work to such additional Work as may be directed by Orange County Sheriff-Coroner Department. The Contractor shall not commit or permit any act, which will interfere with the performance of Work by any other Contractor or by County employees.
24. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
25. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each

for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

26. **Wage Rates:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County on the Contract.

Pursuant to Section 1725.5 of the Labor Code, a Contractor shall be registered to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract that is subject to the requirements of this chapter. For the purposes of this section, "Contractor" includes a Subcontractor as defined by Section 1722.1.

It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public works pursuant to Section 1725.5 at the time the contract is awarded.

The County will not accept a bid nor enter any contract or subcontract without proof of the Contractor or Subcontractor's current registration to perform public works pursuant to Section 1725.5.

Any JOC Task Orders issued under this Contract may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor shall post job site notices, as prescribed by regulation. Each Contractor and Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner.

The Contractor and Subcontractors shall comply with Section 1777.6, which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

27. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County, as a penalty, the sum of Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by Subcontractors, in violation of the provisions of this Contract.

28. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- A. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
 - B. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - C. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - D. Contractor shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - E. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit One Hundred Dollars (\$100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
 - F. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
29. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's Work, and forty (40) hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker

employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and Subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

30. **Registration of Contractors:** Contractor and all Subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
31. **Withholding of Wage Differentials:** The County may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
32. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.
33. **Non-Discrimination:** In the performance of the terms of this Contract, Contractor agrees that he will not engage in nor permit such Subcontractors as he may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.
34. **Assignment Of Antitrust Actions:** In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor, or Subcontractor, offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tender's final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.
35. **Substituted Security:** In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Contract shall be in a for substantially similar to that contained in Public Contract Code, Section 22300.

36. **Apprentices:** The Contractor shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

Contractor agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general Contractors or to contracts of specialty Contractors not bidding for Work through a general or prime Contractor when the Contracts of general Contractors or those specialty Contractors involve less than Thirty Thousand Dollars (\$30,000).

Contractor and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

37. **Liquidated Damages:** Timely Completion of services provided under this Contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the JOC Task Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of time from the County in accordance with this Contract, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each JOC Task Order if applicable.

Schedule for Liquidated Damages

<u>JOC Task Order price</u>	<u>Liquidated damages per day</u>
Up to \$100,000	\$500
Greater Than \$100,000	\$1,000

- A. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each JOC Task Order. No liquidated damages shall apply if not noted on the Request for Proposal. If the Contractor fails to complete any part of the Work in accordance with the Work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the Work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
38. **Material, Workmanship, and Acceptance:**
- A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract documents to the same force and effect as if repeated therein.
- B. All Work under this Contract shall be performed in a skillful and workmanlike manner. Orange County Sheriff-Coroner Department may, in writing, require the Contractor to remove from the Work any employee County Project Manager deems incompetent, careless, or otherwise objectionable.
- C. The Contractor shall, without charge, replace any material or correct any workmanship found by Orange County Sheriff-Coroner Department not to conform to the Contract requirements, unless in the public interest Orange County Sheriff-Coroner Department consents to accept

such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- D. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed.
- E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

39. Subcontracts:

- A. List of Subcontractors: Contractor shall list all Subcontractors, as part of the JOC Task Order Proposal, as provided for in Attachment A, ordering procedures.
- B. Licensed Subcontractors: Each Subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- C. Transactions: Transactions with Subcontractors shall be made through the Contractor except in emergency situations when the Contractor is not readily available, in which case detailed instructions will be transmitted to Subcontractors directly.
- D. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's Work to the extent of such Subcontractor's interest therein.
 - 1) Before starting each section of work, Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, and levels. He shall promptly notify the Contractor who shall notify the County's Project Manager in writing of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.
 - 2) Under no conditions shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with Contractor, who shall maintain coordination control at all times.
- E. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a Subcontractor.

40. Drawings And Specifications:

- A. Checking: The Contractor shall check all drawings and owner-supplied specifications furnished him immediately, for individual JOC Task Orders, upon their receipt and shall promptly notify

the County of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

- B. Omissions and Mis-descriptions: Omissions from the drawings or specifications, or the mis-description of details of Work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of the County as soon as possible. The County shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the Work without issuance of an additional JOC Task Order. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.
- C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall call this to attention of the County and ask for clarification, which is to be documented within the JOC Task Order.
- D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all Contract drawings, details, supplementary drawings, approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence. The Contractor shall maintain on the site a complete "as-built" record set of drawings. In addition, the Contractor shall keep on the site a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the County.
- E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the County, and shall be documented within the Detailed Scope of Work for the specific JOC Task Order.
- F. Technical Specifications: The Technical Specifications furnished on the CD are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications, if any, and the Technical Specifications furnished on the CD.

41. **Division of the Specifications:**

- A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the Work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his Subcontractors, and the County will not be responsible for any division of Work by Subcontractors. The Contractor will be solely responsible for all subcontract arrangements of Work regardless of the location of provisions in the specifications.

- B. Schedules of Work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or Work necessary to complete the Work of any section.
- C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the Work.
- D. Each section of the specifications is covered by applicable requirements of the Contract documents and other related sections as if therein written.

42. **Site Conditions:**

- A. Existing Site Conditions: Information with respect to the site of the Work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the County Project Manager in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.
 - c. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - d. County Project Manager will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required or performance of this Contract, an equitable adjustment in accordance with the provisions of the Contract shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or, time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

- C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or protecting existing main or trunkline utility facilities located on the Contract construction site and not identified in the plans or specifications with reasonable accuracy. This will be accomplished by the issuance of a separate JOC Task Order. The payment of this is full compensation for all Contractor's cost.
- D. Space at Site: The Contractor shall be allowed reasonable space at the site of the Work as available and access thereto and shall confine his operations to the space assigned. The Work

shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other Contractors of the County and shall not commit or permit any act which will interfere with the performance of Work by any other Contractor or employees of the County whether at the site or not.

- E. Facility Security: Contractor shall keep all doors locked while working in any buildings on the site. Keys shall not be left in the doors. Contractor shall not admit any person into the building that is not a direct employee of the Contractor and not actively engaged in performance of the Work. Contractor shall restrict access to the areas of the facility not specifically included in this Contract for construction services. The Contractor shall check all windows and doors for proper closure and locking, extinguish all lights except master security lighting, and then reactivate the security system (if applicable) prior to leaving the facility. The Contractor acknowledges that the primary purpose of the facility is the safe and secure operation of the facility. Contractor and workers shall immediately comply with all directions or orders issued by Sheriff's Department personnel. Changes regarding the quality and quantity of the work will be controlled by the Project Manager. Contractor and workers may be delayed or denied access to the facility, may be ordered to leave a facility prior to the completion of their work or the end of the workday, or may be detained within a facility until an incident is resolved. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
- F. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.
- G. Secured Facilities: For specific JOC Task Orders, the work may be conducted at secured County facilities. As a requirement to work in these Facilities, all Contractor employees, including all Subcontractor employees, must obtain a security clearance. If security clearances are required, this will be discussed at the Joint Scope meeting. At the Joint Scope meeting, all requirements and forms will be provided by the County Project Manager. Also, the requirement to obtain the clearances will be incorporated in the JOC Task Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific JOC Task Order, prior to commencing any construction at the site, Contractor shall obtain security clearances of all persons and/or entities it intends to employ. During the life of a JOC Task Order, Contractor shall remove and replace any employee working on this project when requested to do so by the County.
43. **Beneficial Occupancy**:
- A. The County may, at any time, and from time to time, during the performance of the Work, enter the structure for the purpose of installing any necessary Work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other Work being done by or on behalf of the County.

- B. If, prior to completion and Final Acceptance of all the Work under a specific JOC Task Order, the County takes possession of any structure (whether completed or otherwise) comprising a portion of that Project with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding its normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.
44. **Contract Disputes:** California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. Section 9204 requires that the code section be placed in the public works project contract or summarized. It is set forth in whole, below. For all Public works claims, Owner and Contractor shall follow the steps set forth below.
- a. The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- b. Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- c. For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
- A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- C. Payment of an amount that is disputed by the public entity.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. A. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

B. "Public entity" shall not include the following:

- i. The Department of Water Resources as to any project under the jurisdiction of that department.
- ii. The Department of Transportation as to any project under the jurisdiction of that department.
- iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
- iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
- v. The Military Department as to any project under the jurisdiction of that department.
- vi. The Department of General Services as to all other projects.
- vii. The High-Speed Rail Authority.

4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier Subcontractor.

d. 1. A. Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

B. The claimant shall furnish reasonable documentation to support the claim.

C. If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

D. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

2. A. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

B. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

C. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

Any mediation utilized shall conform to the timeframes in this section.

D. Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

E. This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

5. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the contractor present a claim for work, which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the Subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did

not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

e. The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

f. A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

g. This section applies to contracts entered into on or after January 1, 2017.

h. Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

i. This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

45. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Facilities Planning Contract Administrator
Orange County Sheriff-Coroner Department
431 The City Drive South
Orange, CA 92868

Contractor: Commercial Waterproofing Systems, Inc. dba ERC Roofing & Waterproofing
Attn: Garrett Clark
1630 Palm Street
Santa Ana, CA 92701
(714) 667-6000
estimating@ercroofing.com

46. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

47. **Entire Contract:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
48. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
49. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
50. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's Orange County Sheriff-Coroner Department on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.
51. **Patent Infringement:**
 - A. The Contractor shall pay all royalties and license fees required for the performance of the work. In lieu of the above, the contractor may replace the infringing component with an equal or obtain a right to use from the party alleging the infringement, or modify the component to make it non-infringing providing that any such modification does not invalidate the component's warranty.
 - B. The Contractor shall report to Orange County Sheriff-Coroner Department, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
 - C. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.
52. **Assignment:** Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be

further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

53. Termination For Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of Subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers; and
 - b. The Contractor, within ten (10) days from the beginning of any such delays (Orange County Sheriff-Coroner Department grants a further period of time before the date of final payment under the Contract), notifies Orange County Sheriff-Coroner Department in writing of the causes of delay.
 - c. Orange County Sheriff-Coroner Department shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. Orange County Sheriff-Coroner Department shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 45 of these Articles.
- D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

- 54. Termination for Convenience of the County:** Notwithstanding any other provision of the Contract, the County may, at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop Work in

accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination and such other payment Contractor is entitled to under Attachment A, section II. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

55. Substantial Completion:

- A. The Date of Substantial Completion of each JOC Task Order, or designated portion thereof, is the date certified by the County or the A-E when construction is sufficiently complete, to allow the County to occupy or use the work, or designated portion thereof, for the use for which it is intended.
- B. When Contractor considers that the work, or designated portion thereof which is acceptable to the County, is substantially complete as defined in the JOC Task Order, the Contractor shall prepare for the County a list of items to be completed or corrected and request, in writing, that the work be inspected for substantial completion determination. Failure to include any items on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the JOC Task Order. When the County or the A-E, on the basis of an inspection, jointly determine that the work or designated portion thereof, is substantially complete, they will then prepare and issue a written notification which will establish the date of substantial completion, state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the work, and insurance, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the JOC Task Order shall not commence until the date of final completion of the work, or designated portion thereof, unless otherwise provided in the Notification of Substantial Completion or the JOC Task Order. The Notification of Substantial Completion shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to him.
- C. Should the County or the A-E determine that the work, or the portion thereof designated by Contractor, is not substantially complete, they shall provide the Contractor a written notice stating why the work or designated portion thereof is not substantially completed. The Contractor shall expeditiously complete the work and shall submit a second written request that the County or the A-E perform a Substantial Completion inspection. The Contractor shall pay the County for all costs associated with such re-inspection by the A-E.
- D. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Progress Payment Request for substantial completion payment, except for the retention sums due subsequent to final completion.

56. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

57. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

58. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its Subcontractors, employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
59. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by Subcontractors.
60. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or Subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of Subcontractor's work hereunder, Subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

61. **Qualified Insurer:** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

62. **Required Coverage Forms:** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

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

63. **Required Endorsements:** The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- c) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage, which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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 Contract may be in breach without further notice to Contractor, 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

65. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Task Order Contract, in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of 100 percent of the Task Order Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County and shall be at minimum \$500,000. Such bonds shall be the forms provided in these specifications, issued, and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Orange County Sheriff-Coroner Department, the Contractor shall promptly furnish such additional security as may be required by Orange County Sheriff-Coroner Department or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

66. **Charges, Fines, Penalties and Assessments:** Contractor shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the County by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the Contractor, Contractor's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the County. County is authorized to deduct any such charge, fine penalty, or assessment from any payment County is otherwise required to make to Contractor.

If any such charge, fine, penalty, or assessment is levied against the County subsequent to the completion of the Contract as a result of any action or omission as set forth above, Contractor shall nevertheless be responsible to the County for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the County.

Contractor shall be liable to the County for attorney's fees and costs incurred by the County in enforcing the provisions of this paragraph.

67. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
68. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
69. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
70. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
71. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

72. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
73. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
74. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract and its Attachments. Contractor acknowledges it has read and agrees to all terms and conditions contained in the County of Orange Safety and Loss Prevention Manual, and the Tool Control Guidelines for Contractors Working in Correctional Facilities.
75. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
76. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
77. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
78. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
79. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
80. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in

connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

81. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.
82. **Waiver of Claims:** Unless a shorter time is specified elsewhere in this Contract, on or before making his final request for payment, Contractor shall submit to County, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of his final request for payment.
83. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a JOC Task Order will be issued at the County's discretion.

Any findings of a cultural/scientific resource nature shall remain the property of the County and not become the property of the person or persons making the discovery.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

**Commercial Waterproofing Systems, Inc.
dba ERC Roofing & Waterproofing
a California Corporation**

Date: 10/4/2022 | 1:09:59 PM PDT

By Garrett Clark

Garrett Clark President

Print Name & Title

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

Date: 10/4/2022 | 4:27:03 PM PDT

By Garrett Clark

Garrett Clark Sec/Tres.

Print Name & Title

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

COUNTY OF ORANGE,
a political subdivision of the State of California


Date: _____

By: _____

Matthew J. Monzon, Director
Research & Development

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: 

Jeffrey Stock, Deputy County Counsel

Date: 10/4/2022 | 5:21:07 PM PDT

**ATTACHMENT A
SCOPE OF WORK**

I. SCOPE OF WORK: Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Roofing Services under this Contract. Services may be provided, but may not be limited to, any facility or property, which is owned, operated, or maintained by the County. Roofing Services shall be provided in accordance with the following, which are incorporated herein by this reference.

- A. Construction Task Catalog[®] & Technical Specifications Titled: Job Order Contracting; dated April 2022 (to be distributed at Pre-Bid Meeting).
- B. All other requirements identified specifically in a JOC Task Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies. California Building Code and other codes, ordinances, rules, regulations, orders and legal requirements of Agency Having Jurisdiction which bear on the performance of the work.
- C. Secured Facilities: The Contractor may be required to have their employees, Subcontractors and/or suppliers submit applications and complete security clearances prior to commencing any work in a secured County facility. Contractor employees, Subcontractors and/or suppliers will be required to submit to fingerprinting and personal background checks as part of the security clearance process.
- D. This Contract will be awarded to the lowest, responsive, responsible bidder.
- E. Thereafter, as projects are identified the Contractor will jointly scope the work with the County. The Contractor will prepare a Detailed Scope of Work for County approval. Upon County approval, the County will issue a Request for Proposal to the Contractor. The Contractor will then prepare a JOC Task Order Proposal for the Project including a JOC Task Order Price Proposal, drawings and sketches, a list of Subcontractors and materialmen, construction schedule, and other requested documentation. The JOC Task Order Price shall equal the value of the approved JOC Task Order Price Proposal. The value of the JOC Task Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- F. If the JOC Task Order Proposal is found to be complete and reasonable, a JOC Task Order (JTO) may be issued.
- G. A JOC Task Order will reference the Detailed Scope of Work and set forth the JOC Task Order Completion Time, and the JOC Task Order Price. The JOC Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate JOC Task Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental JOC Task Order(s).

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work, which will be ordered under this Contract.
- B. The total Contract amount will not exceed \$5,000,000.
- C. This is a Contract for work set forth in the Detailed Scope of Work specified in individual JOC Task Orders. The Contractor is required to complete each task within the Detailed Scope of Work for the JOC Task Order Price within the JOC Task Order Completion Time.
- D. Work ordered prior to but not completed by the expiration of the Contract period and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date will be completed with all provisions of this Contract still in force. Performance time for each JOC Task Order issued under this Contract will be determined in

accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual JOC Task Order. Contractor must self-perform 20% of the Work under this Contract, unless otherwise approved or required by the County.

- E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by JOC Task Orders issued in accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the Contract up to and including the quantity designated in the JOC Task Orders issued as the maximum designated in the Contract. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.
- F. All JOC Task Orders that have an NTP issued during the term of this Contract shall be valid and in effect notwithstanding that, the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue up to six (6) months after such period has expired. All terms and conditions of the Contract apply to each JOC Task Order.

III. ORDERING PROCEDURES:

A. Joint Scope Meeting and JOC Task Order Development:

The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

- General Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Date on which the JOC Task Order Proposal is due
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Liquidated Damages
- Any other contractor requirements that are deemed appropriate for the JOC Task Order by the County Project Manager.

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual JOC Task Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for

approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the joint scope meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

The County may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the County cannot agree on the quantities required, or for any other reason as determined by the County. In all such cases, the County shall issue a Supplemental JOC Task Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Request for Proposal

Once the project development stage and joint scope meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor agrees to prepare and submit a JOC Task Order Proposal of Work.

C. JOC Task Order Proposal Development

The Contractor JOC Task Order Proposal agrees to be comprised of the following elements:

1. Detailed JOC Task Order Price Proposal

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will identify the type and number of Work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Proposal shall include, but not be limited to, JOC Task Order Price Proposal, list of anticipated Subcontractors, construction schedule, shop drawings, calculations, Catalog cuts, and specifications.
- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the JOC Task Order Price Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the JOC Task Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non Pre-Priced

is a final determination by the County, binding and conclusive on the Contractor.

- b. Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or Subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

Total for a Non Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x 1.10.

Subcontractor performed duties

If the Non Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D = Lowest of three (3) Subcontractor quotes.

Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x 1.05.

The County's determination as to whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be final, binding and conclusive.

3. Total Fixed Cost of the Proposal

The total fixed cost of the Proposal shall be determined by adding the total Proposal price offered for Pre-Priced and Non Pre-Priced Work units.

After a Non Pre-priced Task has been approved by the County, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each Proposal, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

- a. Schedule Approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- b. Schedule Updates: the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- c. Adjustment of the Work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or JOC Task Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.
 3. Reschedule the Work under the JOC Task Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.

4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.

6. Subcontractor's List

The Proposal represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Proposal amount. Contractors and Subcontractors which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract Work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic JOC Task Order Proposal

The Contractor agrees to transmit an electronic copy of the Proposal, using the County furnished software, to the County.

8. Complete JOC Task Order Proposal

By submitting a signed JOC Task Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular JOC Task Order. It is the Contractor's responsibility to include the necessary line items in the Proposal prior to submitting it to the County. Errors and omissions in the Proposals shall be the responsibility of the Contractor. All costs associated with preparing Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual JOC Task Orders.

D. JOC Task Order Proposal Review

Each Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities and tasks selected. Submittals will be reviewed, as well as the Work duration schedule and list of Subcontractors. The County will evaluate the proposed Work units and may compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of Work units proposed. The County will determine whether the Contractor's Proposal is acceptable.

E. Project Approval

The County may issue a JOC Task Order Authorization for the Work, to include the firm-fixed-price of the JOC Task Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any JOC Task Order issued hereunder.

The County reserves the right to reject a Contractor's Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral JOC Task Order authorization for the Work if a JOC Task Order Price Proposal cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right to not issue a JOC Task Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Proposal expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. JOC Task Order Proposal Time Requirements

1. JOC Task Order Proposal Submittal

The Contractor agrees to respond to a Request for Proposal within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed JOC Task Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Proposal due date unless mutually agreed to by the County.

By submitting a JOC Task Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the JOC Task Order Price Proposal prior to delivering it to the County.

Each JOC Task Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the JOC Task Order Price and the JOC Task Order Completion Time. All clauses of this Contract shall be applicable to each JOC Task Order. The JOC Task Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's JOC Task Order Proposal. A signed copy of the JOC Task Order will be provided to the Contractor.

2. JOC Task Order Proposal Review

The Contractor's project manager or agent agrees to be available for JOC Task Order Proposal review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc.). The County may evaluate the entire JOC Task Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. After review of the Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

- Will constitute or create a hazard to the work, or to persons or property;
- Will not produce finished Work in accordance with the terms of the Contract; or
- Unnecessarily increases the price of the JOC Task Order when alternative means and methods are available.

3. JOC Task Order Proposal Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Proposal by submitting a second, revised Proposal. The Contractor agrees to submit the revised Proposal within forty-eight (48) hours of the initial Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the

County, and re-submit its Proposal within twenty-four (24) hours. No new line items may be added to the revised Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Proposal review.

4. Enforcement of Time Requirements

The JOC Task Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

The County reserves the right to reject a JOC Task Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a JOC Task Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the JOC Task Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a JOC Task Order Proposal (including incidental architectural and engineering services), Subcontractor costs, and the costs to review the JOC Task Order Proposal with the County.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. JOC Task Order Authorization (JTOA)

Upon approval of the Scope of Work and the Contractor's JOC Task Order Proposal, the County will issue a JOC Task Order Authorization (JTOA) to the Contractor. The JTOA will include the firm fixed price of the JOC Task Order and the project duration. Once the JTOA has been issued, the Contractor agrees to:

1. Initiate submission of required shop drawings and submittals to the County for review and approval.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a JOC Task Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the JOC Task Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a JOC Task Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a Supplemental JOC Task Order.

B. Notice to Proceed (NTP)

Following the JOC Task Order Authorization and purchase delivery order (DO) issuance, the County will issue a NTP that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency NTP. In the event the County requires the Contractor to respond to an immediate request for work, a JOC Task Order will be created and an Emergency NTP will be issued. The Contractor will be required to perform the Scope of Work included with the Emergency NTP as directed by the County's Project Manager or designee. The Detailed Scope of Work, JOC Task Order Price Proposal, Subcontractor Listing, Shop Drawings and required Non Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each JOC Task Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all Subcontractors and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00 AM of the following day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the day.
 - b. Construction progress log is to include a narrative of the Work provided by trade(s). Narrative agrees to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific JOC Task Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a Supplemental JOC Task Order, for that specific project, and will be ordered, approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original JOC Task Order Price Proposal. Credits for Pre-Priced and Non Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the

appropriate Adjustment Factors. A Supplemental JOC Task Order will be issued detailing the credit(s) due the County.

F. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed, when determined the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Agreement/ County – Contractor Contract
- B. Addenda (later takes precedence over earlier)
- C. JOC Task Orders (including Scope of Work)
- D. Project manual
- E. Construction Task Catalog®
- F. County Standard Plans
- G. Technical Specifications

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s). The Contractor shall provide incidental engineering and architectural services required in connection with a particular JOC Task Order including drawings and information required for filing.
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the JOC Task Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.

- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific JOC Task Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific JOC Task Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific JOC Task Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific JOC Task Order the following permits may apply. Contractor shall become familiar with these permits and their requirements and comply with their provisions, as amended or reissued. The following permits will be provided by the County:
1. NPDES Dewatering Permit(s)
 2. NPDES Municipal Storm Water Sewer System Permit(s)
 3. NPDES General Construction Permit(s)
 4. Any site specific permits identified by County
- N. Compliance with Terms of Other NPDES Permits:
1. De Minimus Discharges within the Santa Ana Regional Water Quality Control Board, Region 8, Santa Ana Region, Outside of the Newport Bay Watershed
 - a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface

- Waters, Order No. R8-2009-0003, NPDES No. CAG998001 (“General De Minimus Permit), in compliance with the terms and conditions of the General De Minimus Permit, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed. The Santa Ana Regional Board has since issued an updated General De Minimus Permit under Order No. R8-2015-0004.
- b. A copy of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf
 - c. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf
 - d. A copy of the Santa Ana Regional Board’s General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2015-0004) may be found at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015/R8-2015-0004_Updated_General_WDR_for_Discharges_to_Surface_Waters_that_Pose_an_Insignificant_Deminimis_Threat_to_WQ2.pdf
 - e. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County’s Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimus Permit, as reissued in Order No. R8-2015-0004, and as may be further amended or reissued.
- O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):
1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities), which was amended by Orders 2010-0014-DWQ and 2012-0006-DWQ. Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection 6(f) herein below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.
A copy of these documents may be found on the internet at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
 2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project’s Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.

3. Standard PRD Requirements
 - a. Notice of Intent
 - b. Risk Assessment (Standard or Site-Specific)
 - c. Site Map
 - d. SWPPP
 - e. Annual Fee
 - f. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
 - a. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific JOC Task Order, Contractor shall submit:
 - i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
 - ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
 - b. Dischargers who are proposing an alternate Risk Justification shall submit:
 - i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
 - a. Construction sites with less than one (1) acre of disturbance or an R-value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
 - a. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
 - b. Site Map(s) Includes
 - i. The project's surrounding area (vicinity)
 - ii. Site layout
 - iii. Construction site boundaries
 - iv. Drainage areas
 - v. Discharge locations
 - vi. Sampling locations
 - vii. Areas of soil disturbance (temporary or permanent)
 - viii. Active areas of soil disturbance (cut or fill)
 - ix. Locations of all runoff BMPs
 - x. Locations of all erosion control BMPs
 - xi. Location of all sediment control BMPs
 - xii. ATS locations (if applicable)
 - xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
 - xiv. Locations of all post construction BMPs
 - xv. Location of storage areas for waste, vehicles, service, loading/unloading of

materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

c. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

d. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

e. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

f. Risk Assessment

The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

- 1) Receiving water Assessment Interactive map
- 2) EPA Rainfall Erosivity Factor Calculator Website
- 3) Sediment Risk interactive map
- 4) Sediment sensitive water bodies list

- ii. The site-specific Risk Assessment includes the completion of the hand calculated R-value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).
- g. Post Construction Water Balanced Calculator (if applicable)
 The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)
- h. ATS Design Document and Certification
 The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).

P. Best Management Practices (PMF9.2S)

Contractor and all of Contractor's, Subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Storm water Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

Contractor shall comply with all water quality ordinances, permits and regulations. If Work identified under a Specific JOC Task Order does not fall within statewide Painting Permit, Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.

Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Sheriff's Department Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.
- H. The Contractor shall possess a current State of California Class C-39 (Roofing) Contractor's license issued by the California State Contractor's License Board.
- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific JOC Task Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OCSD.

- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 P.M. and 7 A.M. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area, which are shown on the plans, are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials, which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.
- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of

the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.

- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, bitumen's or other harmful materials, and shall be responsible for removing said materials in the event protective measures are not effective.

Construction site shall be maintained in such a condition that an anticipated storm does not carry wastes or pollutants off site.

Discharges of material other than storm water are allowed only when necessary for performance and completion of construction practices and where they do not: cause or contribute to a violation of any water quality standard; cause or threaten to cause pollution, contamination, or nuisance; or contain a hazardous substance in a quantity reportable under Federal Regulations 40 CFR Parts 117 and 302, or any other law or applicable regulation.

Potential pollutants include but are not limited to: vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushing's.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

Notwithstanding the above, management of storm water shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing storm water.

VIII. STOP WORK:

The County may, at any time, by written Stop Work order to the Contractor, require the Contractor to stop all or any part of the work, as per a specific JOC Task Order, for a period of ninety (90) days after the Stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The Stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work order is delivered

to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the JOC Task Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, Subcontractor lists, and other requirements specified by the County. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A sample Gordian's license and user agreement is as follows:

Software License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Client Contract (as defined below). Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that has contracted with Licensee for construction services ("Client Contract"), Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Client Contract, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Client Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog® and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of

delivery. In the event the applicable Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian a license fee of 1% of the value of work procured from Licensee by Client ("Contractor License Fee") pursuant to the Client Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

ATTACHMENT B

CONTRACTOR'S PRICING BID FORM

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Roofing Services, as set forth in Attachment "A" Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

- II. FEES AND CHARGES:** County will pay the following in accordance with the provisions of this Contract.

- A. Adjustment Factors:** The Contractor's three (3) Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog[®]. These Adjustment Factors will be used to price out fixed price JOC Task Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

- i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00 AM to 5:00 PM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.3900

Utilize four decimal places

One point three nine zero zero
For Normal Working Hours (in words)

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01 PM to 6:59 AM) in General Facilities as ordered by the County in individual JOC Task Orders against this Contract.

1.4800

Utilize four decimal places

One point four eight zero zero
For Other Than Normal Working Hours (in words)

- iii. **FACTOR 3** - Unit Work requirements to be performed during Normal Working Hours and Other Than Normal Working Hours (12:00 AM to 12:00 PM) in **Secured Facilities** as ordered

by the County as noted in the Detailed Scope of Work in individual JOC Task Orders against this Contract.

1.6900

Utilize four decimal places

One point six nine zero zero

For Normal Working Hours and Other Than Normal Working Hours Secured Facilities (in words)

B. ACKNOWLEDGEMENT OF ADDENDA:

This bid has accounted for and bidder hereby acknowledges the following Addenda No(s):

N/A (if no addenda were issued by OCSO put N/A)

C. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$5,000,000

D. THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES MUST BE GREATER THAN OR EQUAL TO THE NORMAL WORKING HOURS ADJUSTMENT FACTOR IN GENERAL FACILITIES.

E. THE SECURED FACILITIES WORKING HOURS MUST BE GREATER THAN OR EQUAL TO THE OTHER THAN NORMAL WORKING HOURS ADJUSTMENT FACTOR.

The formula below is an integral part of this bid and to be responsive the bidder shall quote for the total works above, and also shall complete and submit the award formula below.

The weighted multipliers are for the purpose of calculating an Award Formula only. No assurances are made by the County that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Awarded Formula is only used for the purpose of determining the bid.

AWARD FORMULA

Line 1: General Facilities Normal Working Hours - Adjustment Factor 1	<u>1.3900</u>
Line 2: Multiply Line 1 by (40) %	<u>0.5560</u>
Line 3: General Facilities Other than Normal Working Hours - Adjustment Factor 2	<u>1.4800</u>
Line 4: Multiply Line 3 by (30) %	<u>0.4440</u>
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	<u>1.6900</u>
Line 6: Multiply Line 5 by (30) %	<u>0.5070</u>
Line 7: Add Lines 2, 4 and 6	<u>1.5070</u>

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County that Work will be ordered under the Contract in a distribution

consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid. When submitting JOC Task Order Price Proposals related to specific JOC Task Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

The above Adjustment Factors are to be specified to four decimal places. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. All prices and information required on the bid form must be either typewritten or neatly printed in ink (use figures only). Line 7 above will be used to determine award to the lowest bidder. The County of Orange reserves the right to revise all arithmetic errors in calculations for correctness. The bidder agrees that if there are any discrepancies or questions in the figures, the County will use the figures submitted by the Contractor despite the bidder's intent. The County reserves the right to reject any and all bids and to waive any irregularities.

III. PRICE INCREASES/DECREASES: No increases to the Adjustment Factors or to any line items in the Construction Task Catalog[®] will be permitted during the term of this Contract.

IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific JOC Task Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place. The format shall be expanded to show percentage and cost of work completed for each application, total percentage and cost completed to date, and balance of percentage and cost remaining for each cost code of the sixteen-division format. Round all figures to the nearest dollar.
- B. **Lump sum payment** - If an individual JOC Task Order is scheduled for Completion within forty-five (45) days or less, the County will make one payment after thirty (30) days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the JOC Task Order.
- C. **Partial payment** – The County will consider a request for partial payments for JOC Task Orders scheduled for a performance period of greater than forty-five (45) days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual JOC Task Order must be filed. Final payment is to be made thirty-five (35) days subsequent to the filing of the Notice of Completion.
- E. **Retention release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the JOC Task Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County

for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:

1. All warranties and maintenance requirements; and
2. All as-built prints and record drawings; and
3. All operation and maintenance manuals; and
4. All badges, keys and security entry cards; and
5. Conducted all required training for County Personnel;
6. All other items as applicable.

F. **Payments Withheld** – The County’s Project Manager may decline to recommend payment and may withhold the Progress Payment Request in whole or part, to the extent necessary to protect County, if in its opinion it is unable to make correct and accurate representations to County Auditor. If the County’s Project Manager is unable to make representations to the County Auditor and to certify payment in the amount of the Progress Payment Request, it will notify the Contractor. If the Contractor, and the County’s Project Manager cannot agree on a revised amount, the County’s Project Manager will promptly issue a Progress Payment Request in the amount for which it is able to make such representations to the County Auditor. The County’s Project Manager may also decline to certify payment or any part thereof or, because of subsequent observations, they may nullify the whole or any part of any Progress Payment Request previously issued, to such extent as may be necessary in its opinion to protect the Defective work not remedied;

- a) Defective work not remedied;
- b) Third party claims filed;
- c) Failure of the Contractor to make payments properly to Subcontractor for labor, materials or equipment;
- d) Reasonable evidence, that the work cannot be completed for the unpaid balance of the contract sum;
- e) Damage to the County or another Contractor;
- f) Reasonable evidence, that the work will not be or has not been completed within the contract time or specific dates;
- g) Failure to carry out the work in accordance with the Contract;
- h) Stop notices filed for any portion of the work; or
- i) Failure or refusal of the Contractor to fully comply with the Contract requirements.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange, verified, and approved by the agency/department and subject to routine processing requirements. The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- B. The Contractor agrees that its signature on the invoice, as herein prescribed, constitutes a sworn Statement. The Contractor agrees that its signature on the invoice requesting either partial or final payment certifies that:
1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.
 2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject Contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with this Contract and their subcontract agreements.
 4. This request for payment does not include any amounts, which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned, transferred, or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the Contract.
 9. Request for final payment, the Contractor agrees that its signature on the invoice form certifies that all Punch List items have been signed off as completed by the County, and that all building inspection cards have been completed.
- C. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one (1) year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- D. If the Contractor's invoice is not approved, the County will issue a "Return of Invoice for Correction" letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, invoice.
- E. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices. After the first payment and before making any other payment to the Contractor, the County will require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this Contract.
- F. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

G. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1. above)
3. Name of County department
4. County Contract number
5. Service date(s)
6. Service description
7. Contractor's Federal I. D. number
8. Updated duration schedule
9. An updated schedule of values
10. Releases
11. Total

Invoices and support documentation shall be submitted to the following address:

OCS D Research and Development
Facilities Planning
Attn: *Project Manager*
431 The City Drive South
Orange, CA 92868

H. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the Contract Administrator.

BID SUMMARY FOR JOC GENERAL BUILDING SERVICES

Bid Opening September 21,2022

	Awarded Contractors
	Not Awarded - Non-Responsive Bid
	Mathematical Error Correction (Bid contained a rounding error; math correction does not affect standing)

9 BIDS RECEIVED		Horizons Construction, Inc.	PUB Construction, Inc.	MTM Construction, Inc.	Vincor Construction, Inc.	MIK Construction, Inc.	CTG Construction, Inc.	New Creation Builders
<i>Respondent Name</i>								
<i>License No.</i>		825022	788668	659142	763743	921766	635916	768842
Ranking:		1	2	3	4	5	6	7
Factor	Description	Quantity	Quantity	Quantity	Quantity	Quantity	Quantity	Quantity
1	General Facilities - Normal Working Hours	0.8500	0.9600	0.9100	0.9400	0.9400	0.9000	0.9800
2	General Facilities - Other than Normal Working Hours	0.8600	0.9650	0.9101	0.9400	0.9401	0.9100	1.0000
3	Secured Facilities - Normal Working Hours and Other Than Normal Working Hours	1.0500	0.9700	1.1000	1.0800	1.1000	1.2000	1.0700
Award Criteria Figure		0.9130	0.9645	0.9670	0.9820	0.9880	0.9930	1.0130

<i>Respondent Name</i>		Dalke & Sons	SJD&B, Inc.
<i>License No.</i>		612500	1001950
Ranking:		8	9
Factor	Description	Quantity	Quantity
1	General Facilities - Normal Working Hours	0.9683	0.9700
2	General Facilities - Other than Normal Working Hours	0.9903	1.0200
3	Secured Facilities - Normal Working Hours and Other Than Normal Working Hours	1.1503	1.2200
Award Criteria Figure		1.0295	1.0600

BID SUMMARY FOR JOC ELECTRICAL SERVICES

Bid Opening September 21,2022

- Awarded Contractors
- Not Awarded - Non-Responsive Bid
- Mathematical Error Correction (Bid contained a rounding error; math correction does not affect standing)

3 BIDS RECEIVED		Federal Technology Solutions, Inc.	Mel Smith Electric, Inc.	Baker Electric
<i>Respondent Name</i>				
<i>License No.</i>		865369	394741	161756
<i>Ranking:</i>		1	2	3
Factor	Description	Quantity	Quantity	Quantity
1	General Facilities - Normal Working Hours	1.4113	1.4300	1.3997
2	General Facilities - Other than Normal Working Hours	1.4291	1.4600	1.5396
3	Secured Facilities - Normal Working Hours and Other Than Normal Working Hours	1.4500	1.4900	1.8355
Award Criteria Figure		1.4282	1.4570	1.5724

BID SUMMARY FOR JOC MECHANICAL SERVICES

Bid Opening September 21, 2022

- Awarded Contractors
- Not Awarded
- Mathematical Error Correction (Bid contained a rounding error; math correction does not affect standing)

2 BIDS RECEIVED			
		ABM Building Solutions, LLC	Mesa Energy Systems, Inc.
<i>Respondent Name</i>			
<i>License No.</i>		976012	611215
Ranking:		1	2
Factor	Description	Quantity	Quantity
1	General Facilities - Normal Working Hours	0.9499	1.3955
2	General Facilities - Other than Normal Working Hours	1.1828	1.7375
3	Secured Facilities - Normal Working Hours and Other Than Normal Working Hours	1.2593	2.2587
Award Criteria Figure		1.1126	1.7570

BID SUMMARY FOR JOC ROOFING SERVICES

Bid Opening September 21, 2022

- Awarded Contractors
- Not Awarded
- Mathematical Error Correction (Bid contained a rounding error; math correction does not affect standing)

2 BIDS RECEIVED				
		Respondent Name	AME Builders Inc.	Commercial Waterproofing Systems
		License No.	1057266	781499
		Ranking:	1	2
Factor	Description	Quantity	Quantity	
1	General Facilities - Normal Working Hours	1.1500	1.3900	
2	General Facilities - Other than Normal Working Hours	1.2000	1.4800	
3	Secured Facilities - Normal Working Hours and Other Than Normal Working Hours	1.2400	1.6900	
Award Criteria Figure		1.1920	1.5070	

**Pre-Qualification List for OCSD JOC Advertisement for Bids
Adopted by Board 8/23/22 (ASR Control 22-000721)**

CATEGORY 1: GENERAL CONSTRUCTION		PREQUAL
NO.	CONTRACTOR	RESULTS:
1	ACT 1 CONSTRUCTION	PASS
2	CTG CONSTRUCTION, INC.	PASS
3	DALKE & SONS	PASS
4	F.M. THOMAS AIR CONDITIONING, INC.	PASS
5	HORIZONS CONSTRUCTION CO.	PASS
6	MIK CONSTRUCTION	PASS
7	MTM CONSTRUCTION, INC.	PASS
8	NEW CREATION BUILDERS	PASS
9	P.H. HAGOPIAN CONTRACTOR, INC.	PASS
10	PUB CONSTRUCTION, INC.	PASS
11	SJD&B, INC.	PASS
12	VINCOR	PASS

CATEGORY 3: ELECTRICAL		PREQUAL
NO.	CONTRACTOR	RESULTS:
1	BAKER ELECTRIC & RENEWABLES LLC	PASS
2	FEDERAL TECHNOLOGY SOLUTIONS, INC.	PASS
3	MEL SMITH ELECTRIC, INC.	PASS

CATEGORY 2: MECHANICAL		PREQUAL
NO.	CONTRACTOR	RESULTS:
1	ABM BUILDING SOLUTIONS, LLC	PASS
2	MESA ENERGY SYSTEMS, INC. (EMCOR)	PASS
3	PAN PACIFIC MECHANICAL LLC	PASS

CATEGORY 5: ROOFING		PREQUAL
NO.	CONTRACTOR	RESULTS:
1	AME BUILDERS, INC.	PASS
2	COMMERCIAL WATERPROOFING SYSTEMS, INC.	PASS

Contract Summary Form

CTG Construction, Inc. dba C.T. Georgiou Painting Co.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010429 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9000
Line 2: Multiply Line 1 by (40)%	0.3600
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.9100
Line 4: Multiply Line 3 by (30)%	0.2730
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.2000
Line 6: Multiply Line 5 by (30)%	0.3600
Award Criteria Factor	0.9930

Contract Summary Form

Dalke & Sons Construction, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010430 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9683
Line 2: Multiply Line 1 by (40)%	0.3873
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.9903
Line 4: Multiply Line 3 by (30)%	0.2971
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.1503
Line 6: Multiply Line 5 by (30)%	0.3451
Award Criteria Factor	1.0295

Contract Summary Form

Horizons Construction Company International, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010431 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.8500
Line 2: Multiply Line 1 by (40)%	0.3400
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.8600
Line 4: Multiply Line 3 by (30)%	0.2580
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.0500
Line 6: Multiply Line 5 by (30)%	0.3150
Award Criteria Factor	0.9130

Contract Summary Form

MIK Construction, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010432 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9400
Line 2: Multiply Line 1 by (40)%	0.3760
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.9401
Line 4: Multiply Line 3 by (30)%	0.2820
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.1000
Line 6: Multiply Line 5 by (30)%	0.3300
Award Criteria Factor	0.9880

Contract Summary Form

MTM Construction, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010433 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9100
Line 2: Multiply Line 1 by (40)%	0.3640
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.9101
Line 4: Multiply Line 3 by (30)%	0.2730
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.1000
Line 6: Multiply Line 5 by (30)%	0.3300
Award Criteria Factor	0.9670

Contract Summary Form

New Creation Engineering & Builders, Inc. dba New Creation Builders

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010434 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9800
Line 2: Multiply Line 1 by (40)%	0.3920
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.0000
Line 4: Multiply Line 3 by (30)%	0.3000
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.0700
Line 6: Multiply Line 5 by (30)%	0.3210
Award Criteria Factor	1.0130

Contract Summary Form

PUB Construction, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010435 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9600
Line 2: Multiply Line 1 by (40)%	0.3840
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.9650
Line 4: Multiply Line 3 by (30)%	0.2895
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	0.9700
Line 6: Multiply Line 5 by (30)%	0.2910
Award Criteria Factor	0.9645

Contract Summary Form

SJD&B, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010436 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9700
Line 2: Multiply Line 1 by (40)%	0.3880
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.0200
Line 4: Multiply Line 3 by (30)%	0.3060
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.2200
Line 6: Multiply Line 5 by (30)%	0.3660
Award Criteria Factor	1.0600

Contract Summary Form

Vincor Construction, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010437 for Job Order Contracting (JOC) for General Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9400
Line 2: Multiply Line 1 by (40)%	0.3760
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	0.9400
Line 4: Multiply Line 3 by (30)%	0.2820
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.0800
Line 6: Multiply Line 5 by (30)%	0.3240
Award Criteria Factor	0.9820

Contract Summary Form

Baker Electric & Renewables LLC dba Baker Electric

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010438 for Job Order Contracting (JOC) for Electrical Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	1.3997
Line 2: Multiply Line 1 by (40)%	0.5599
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.5396
Line 4: Multiply Line 3 by (30)%	0.4619
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.8355
Line 6: Multiply Line 5 by (30)%	0.5506
Award Criteria Factor	1.5724

Contract Summary Form

Federal Technology Solutions, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010439 for Job Order Contracting (JOC) for Electrical Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	1.4113
Line 2: Multiply Line 1 by (40)%	0.5645
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.4291
Line 4: Multiply Line 3 by (30)%	0.4287
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.4500
Line 6: Multiply Line 5 by (30)%	0.4350
Award Criteria Factor	1.4282

Contract Summary Form

Mel Smith Electric, Inc.

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010440 for Job Order Contracting (JOC) for Electrical Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	1.4300
Line 2: Multiply Line 1 by (40)%	0.5720
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.4600
Line 4: Multiply Line 3 by (30)%	0.4380
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.4900
Line 6: Multiply Line 5 by (30)%	0.4470
Award Criteria Factor	1.4570

Contract Summary Form

ABM Building Solutions, LLC

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010441 for Job Order Contracting (JOC) for Mechanical Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	0.9499
Line 2: Multiply Line 1 by (40)%	0.3800
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.1828
Line 4: Multiply Line 3 by (30)%	0.3548
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.2593
Line 6: Multiply Line 5 by (30)%	0.3778
Award Criteria Factor	1.1126

Contract Summary Form

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010442 for Job Order Contracting (JOC) for Mechanical Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	1.3955
Line 2: Multiply Line 1 by (40)%	0.5582
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.7375
Line 4: Multiply Line 3 by (30)%	0.5212
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	2.2587
Line 6: Multiply Line 5 by (30)%	0.6776
Award Criteria Factor	1.7570

Contract Summary Form

AME Builders Inc. dba AME Roofing

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010443 for Job Order Contracting (JOC) for Roofing Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	1.1500
Line 2: Multiply Line 1 by (40)%	0.4600
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.2000
Line 4: Multiply Line 3 by (30)%	0.3600
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.2400
Line 6: Multiply Line 5 by (30)%	0.3720
Award Criteria Factor	1.1920

Contract Summary Form

Commercial Waterproofing Systems, Inc. dba ERC Roofing & Waterproofing

SUMMARY OF SIGNIFICANT CHANGES

No signification from previous contract.

SUBCONTRACTORS

This contract MA-060-23010444 for Job Order Contracting (JOC) for Roofing Construction Services includes the following subcontractors or pass through to other providers.

Subcontractor Name	Service(s)	Amount
Unknown at this time.	Unknown at this time.	Unknown at this time.

CONTRACT OPERATING EXPENSES

Award Formula:

Task	Composite Bid
Line 1: General Facilities Normal Working Hours – Adjustment Factor 1	1.3900
Line 2: Multiply Line 1 by (40)%	0.5560
Line 3: General Facilities Other than Normal Working Hours – Adjustment Factor 2	1.4800
Line 4: Multiply Line 3 by (30)%	0.4440
Line 5: Secured Facilities Normal and Other than Normal Working Hours – Adjustment Factor 3	1.6900
Line 6: Multiply Line 5 by (30)%	0.5070
Award Criteria Factor	1.5070



County Executive Office

Memorandum

October 12, 2022

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

2022 OCT 13 PM 12:45
RECEIVED
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF ORANGE
Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2022.10.12 15:36:45
-07'00'

Frank Kim

S42F

The County Executive Office is requesting a Supplemental Agenda Staff Report for the October 18, 2022, Board Hearing.

Agency: OC Community Resources
Subject: Approve Loan Increase Request and Ground Lease for Motel 6
Districts: 5th District

Reason Item is Supplemental: This item needs to be heard at the October 18, 2022, meeting for timely approval of various actions to meet Homekey Program milestone deadlines for the Motel 6 Homekey project. This Agenda Staff Report is being filed as a Supplemental Item due to a change in ownership and financing structure which included the introduction of a non-profit partner and request for additional funding, which required additional time to coordinate and update the financing and real estate documents associated with the changes.

Justification: If this item does not come at the requested Board meeting, the Motel 6 Homekey project will not be able to close on construction financing in November 2022 and complete construction by the Homekey Program's 12-month construction completion deadline.

Concur:

Doug Chaffee

Doug Chaffee, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

Agenda Item 542F
Clerk's Use Only



SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 10/18/22

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): 5

SUBMITTING AGENCY/DEPARTMENT: OC Community Resources
Cymantia Atkinson
78978878F204433
Department Head Signature

DEPARTMENT HEAD REVIEW:

DEPARTMENT CONTACT PERSON(S): Dylan Wright (714) 480-2788
Thomas Miller (714) 834-6019

RECEIVED
OCT 19 PM 12:46
COUNTY CLERK'S OFFICE

SUBJECT: Approve Loan Increase Request and Ground Lease for Motel 6

CEO CONCUR

Digitally signed by Frank Kim
DN: cn=Frank Kim, ou=County of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2022.10.12 15:47:45 -0700

CEO Signature

COUNTY COUNSEL REVIEW

Approve Amendments and Resolution
[Signature]
Action
8452584753D3488...

County Counsel Signature

CLERK OF THE BOARD

Discussion

3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: See Financial Impact Section

County Audit in last 3 years No

Prior Board Action: 12/14/2021 #S39G

RECOMMENDED ACTION(S)

1. Adopt amended Resolution Attachment A to include additional Co-Applicant, CM Mercy House CHDO LLC, authorizing and directing the following:
 - a. To submit a joint Application to the State Department of Housing and Community Development in response to the Notice of Funding Availability, and to jointly apply for Homekey grant funds in a total amount not to exceed \$11,000,000.
 - b. To enter into, execute, and deliver the Standard Agreement in a total amount not to exceed \$11,000,000, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds from the Department and to participate in the Homekey Program, and all amendments thereto; and,
 - c. To be subject to the terms and conditions specified in the Standard Agreement, and that the Notice of Funding Availability and Application will be incorporated in the Standard Agreement by reference and made a part thereof. Any and all activities, expenditures, information and

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timelines represented in the Application are enforceable through the Standard Agreement. Funds are to be used for the allowable expenditures and activities identified in the Standard Agreement.

- d. To execute the Application and the Homekey Documents on behalf of Co-Applicant for participation in the Homekey Program.
2. Authorize the OC Community Resources Director or designee to utilize up to \$2,000,000 in Mental Health Services Act Funds (or other dedicated housing funds including but not limited to Housing Successor and Federal HOME funds) previously approved and committed to Community Development Partners to commit to CM Mercy House CHDO LLC, for partial development costs, including acquisition and/or rehabilitation of the property, associated with Motel 6, located at 2274 Newport Boulevard, Costa Mesa.
3. Authorize the OC Community Resources Director or designee to increase the amount of the 2020 Supportive Housing Notice of Funding Availability by \$2,500,000 with available funding as outlined in the Financial Impact Section.
4. Authorize the OC Community Resources Director or designee to utilize \$2,500,000 in available funding as outlined in Financial Impact Section for loan financing to CM Mercy House CHDO LLC, for partial development costs, including acquisition and/or rehabilitation of the Motel 6.
5. Approve loan commitments to CM Mercy House CHDO LLC with a per unit loan limit of approximately \$250,000 for 10 Mental Health Service Act units and a per unit loan limit of approximately \$66,666 for 30 units for households experiencing homelessness, exceeding the per unit loan limits under the 2020 Supportive Housing Notice of Funding Availability for a development in the City of Costs Mesa, for a total amount not to exceed \$4,500,000, subject to contingencies outlined in this Agenda Staff Report.
6. Approve subordination at acquisition, construction and permanent financing of the combined up to \$4,500,000 County loan commitments to a first trust deed loan of approximately \$7,900,000, with the ability to increase 10 percent due to an increase of construction costs, as set forth in this Agenda Staff Report and authorize the OC Community Resources Director or designee to subordinate to additional senior debt up to 100 percent of the cumulative loan-to-value based on the as-built appraised market value, if necessary, based on any future changes in project financing.
7. Authorize the OC Community Resources Director or designee to close on the financing and execute subordination agreements, standard set of loan documents and restrictive covenants and such additional agreements, contracts, instructions and instruments as necessary or appropriate for acquisition, construction and permanent loan financing.
8. Authorize the OC Community Resources Director or designee to execute assignments of County's loan documents and restrictive covenants with CM Mercy House CHDO LLC to a yet to be formed limited partnership, that includes Mercy House, or one of its affiliates, as a general partner, as necessary or appropriate upon future low-income housing tax credit or bond financing.
9. Approve and authorize the Chief Real Estate Officer or designee to execute the Ground Lease with CM Mercy House CHDO LLC, in substantially the form attached, to facilitate development, construction and financing for affordable housing purposes, with minor modifications that do not materially alter the terms or financial obligations to the County, with approval of County Counsel,

and to execute any documents and perform all activities specified under the terms of the Ground Lease.

10. Approve and authorize the Chief Real Estate Officer or designee to execute a Lease Rider with the California Tax Credit Allocation Committee, if necessary and in substantially the form attached, to further facilitate the development, construction and financing for affordable housing purposes, with minor modifications that do not materially alter the terms or financial obligations to the County, with approval of County Counsel, to be executed pursuant to the conditions of the lease as applicable.
11. Authorize the Chief Real Estate Officer or designee to execute lease amendments, which do not increase County costs by more than \$75,000 a year and do not increase the County's liability and additional documents as necessary to facilitate the construction and financing consistent with the Ground Lease and loan terms, approved by County Counsel.

SUMMARY:

Adoption of the amended Homekey Program authorizing resolution, approval to increase the 2020 Supportive Housing Notice of Funding Availability, commitment of up to \$4,500,000 in County funding for loan financing, inclusion of CM Mercy House CHDO LLC as lead applicant/borrower for County funds and co-applicant for Homekey funding, subordination loans at acquisition, construction and permanent financing, future assignment of County's loans and restrictive covenants and approval of the Lease Rider and Ground Lease will facilitate long-term financing needs for the Motel 6 Homekey project and support the production of supportive housing in Orange County.

BACKGROUND INFORMATION:

Building on the success of the first round of Homekey funds, the Homekey Program Round 2 (Homekey) is a state grant funded program administered by the California Department of Housing and Community Development (State HCD). Approximately \$1.45 billion in grant funding was made available statewide as part of the Round 2 Notice of Funding Available (NOFA) to continue the State's efforts to rapidly expand housing for persons experiencing homelessness or at risk of homelessness and who are inherently impacted by or at increased risk of homelessness due to the COVID-19 pandemic. In Round 1 of Homekey, the County was awarded funding for two Homekey projects totaling over \$25 million toward the creation of 130 permanent supportive housing units.

On December 14, 2021, the Board of Supervisors (Board) approved the selection of Motel 6 (Development) for utilization of 30 Veterans Affairs Supportive Housing (VASH), Mainstream and/or Housing Choice Project-Based Vouchers and up to \$2 million in Mental Health Services Act (or other dedicated housing funds including, but not limited to, Housing Successor and Federal HOME funds) for loan financing to the developer, Community Development Partners (CDP). The Board also approved submission of an application for Round 2 Homekey funding for the Development and the County and CDP as co-applicants were awarded \$10,550,000 on April 25, 2022. Pursuant to Homekey Program requirements, the applicant/award recipient will have 12 months from the date of award to complete the acquisition and rehabilitation of the Development.

The Development is the rehabilitation of a former 94-unit motel located in the City of Costa Mesa (City) and will be completed and financed in two phases. The first phase (Phase I) will utilize a combination of Homekey Program grant funds, County and City funds as well as a \$7.9 million acquisition loan for the conversion of 40 units to Permanent Supportive Housing (PSH), of which 10 PSH units will target individuals who are at-risk of homelessness and meet the Mental Health Services Act (MHSA) eligibility

criteria, and 30 units for homeless veterans earning no more than 30 percent of the Area Median Income (AMI).

To qualify for acquisition tax credits and meet the 10-year ownership rule under the California Tax Credit Allocation Committee Regulations for the financing of the second phase (Phase II), a public entity or non-profit will need to be the borrower of the acquisition loan and enter into the County's Ground Lease. As such, CDP is including their non-profit partner, CM Mercy House CHDO LLC (Mercy House) into the deal structure. Mercy House will replace CDP as the lead applicant/borrower under the County's 2020 Supportive Housing Notice of Funding Availability (2020 NOFA), be included as a Co-Applicant entity on the State HCD Homekey application and be awarded upon submission of the adopted amended Resolution (Attachment A).

As proposed, CDP will assign the existing Purchase and Sale Agreement to Mercy House who will then assign it to the County to acquire the property in November 2022. Upon acquisition, the County, as the new owner of the Development, will enter into a Ground Lease with Mercy House. CDP will continue to be the lead developer and manage the rehabilitation and operations of the Development and Mercy House will have site control and assume the financial liabilities as the borrower/grantee of the acquisition loan and County and City funds.

The County will record 55-year rent and occupancy restrictions on up to 10 studio units for MHSA eligible individuals at-risk of homelessness earning at or below 30 percent AMI and up to 30 units for individuals experiencing homelessness earning at or below 30 percent AMI. All 40 PSH units will be restricted by the County at or below 30 percent AMI for 55 years as required under the Homekey Program. The specific rent and occupancy restrictions may ultimately change based on the final financing structure of the Development. CDP and Mercy House anticipates applying for tax credits to finance the Phase II, which will cover the remaining non-Homekey affordable housing units. Upon receipt of future low-income tax credit and or bond financing the County's loan documents and restrictive covenants with Mercy House will be assigned to a yet to be formed limited partnership, that includes Mercy House, or one of its affiliates, as a general partner, and the County will execute a Lease Rider with the California Tax Credit Allocation Committee.

Due to increases in construction costs and rising interest rates, many developers are identifying large funding gaps as they move towards closing their construction loan financing. The City approved a \$3.5 million contribution to the Development at a City Council meeting on November 16, 2021, and a \$1.5 million contribution on July 19, 2022, for a total contribution of \$5 million. The City's contribution and the additional County loan commitment of \$2.5 million will help fill the Development's financial gap. With the additional County and City funds, the Development can close on the acquisition/construction loan financing in November 2022 to begin construction in an effort to meet State HCD's Homekey Program deadline to complete construction within 12 months of award. County staff and CDP are working with State HCD on an extension to push out the current construction completion milestone from the April 2023 deadline to December 2023.

OC Community Resources (OCCR) is requesting approval to increase the 2020 NOFA by \$2.5 million and authorization to commit the \$2.5 million and the previously approved \$2 million for the Development (for a total of up to \$4.5 million) to Mercy House as the lead applicant under the 2020 NOFA. Under the 2020 NOFA policies, Mercy House can request \$177,144 per unit in MHSA funding and \$48,600 per unit in non-MHSA funding sources for a development located in an entitlement city, however, due to the Development's financing gap and limited available resources to fill the gap and with the quickly approaching deadline to close on construction loan financing, OCCR recommends exceeding the allowable per unit loan limits and underwrite the Development with a per unit loan limit of \$250,000 for 10 MHSA

units and approximately \$66,666.67 for 30 units for households experiencing homelessness, totaling \$4.5 million.

Below are the updated financial summary highlights of the Acquisition/Construction Financing phase of the Development during Phase I and the anticipated Permanent Financing during Phase II:

Phase 1 Acquisition/Construction Sources:	
Acquisition Loan	\$7,900,000
County of Orange (MHSA)	\$2,500,000
County of Orange (Other/Southern California Home Financing Authority)	\$2,000,000
City of Costa Mesa (ARPA Grant)	\$3,500,000
City of Costa Mesa (HOME)	\$1,500,000
California Department of HCD Homekey Program (Grant)	\$10,000,000
Total Sources of Funds	\$27,400,000

Phase 2 Permanent Sources:	
Permanent Loan	\$5,006,272
County of Orange (MHSA)	\$2,500,000
County of Orange (Other/Southern California Home Financing Authority)	\$2,000,000
City of Costa Mesa	\$1,500,000
Seller Carryback Loan	\$6,513,580
Orange County Housing Finance Trust	\$1,908,580
Deferred Developer Fee	\$1,555,900
Tax Credit Equity	\$11,833,586
Total Sources of Funds	\$32,817,918

County Loan Terms:

Construction to Permanent Loans:	\$4,500,000 (combined)
Interest Rate:	3 percent simple
Term:	55 years
Security:	Second and Third Deed of Trust at Construction and Permanent financing
Payments:	Residual Receipts share per the 2020 NOFA

Note: Financing subject to change prior to construction and completion of each phase of the Development. Underwriting guidelines per 2020 NOFA.

Based on the updated financing, the combined not to exceed \$4.5 million County loans will be funded at acquisition/construction and will be subordinate to a first trust deed loan of approximately \$7.9 million, with the ability to increase 10 percent due to an increase of construction costs. OCCR intends to fund the not to exceed \$4.5 million loans at acquisition/construction closing for Phase I and convert the loan at permanent loan closing for Phase II. OCCR is requesting authorization to subordinate to additional senior debt, up to 100 percent of the cumulative loan-to-value, based on the as-built appraised market value, and if necessary, on any future changes in project financing. OCCR will calculate the senior debt plus the County loans and subtract the total from the current (within last six months) as-built appraised market value. By doing so, it will determine the maximum additional senior debt to which County will subordinate its loans. If the current as-built appraised market value exceeds the cumulative senior debt plus the County loans, the County may subordinate to additional senior debt, if necessary, for the viability of the project.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and therefore is not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since it is for the approval to increase funding in the County 2020 NOFA, authorization to commit funds for loan financing, subordination of the County loans at construction and permanent financing and future assignment of County's loans and restrictive covenants to facilitate the development of the Motel 6 and approval of the Lease Rider and Ground Lease to facilitate long-term financing needs for the Motel 6 Homekey project and support the production of supportive housing in Orange County. Therefore, this proposed activity is not subject to CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA.

Compliance with NEPA: Per 24 CFR Part 58, an Environmental Assessment of the project was completed and the Authority to Use Grant Funds was issued by the U.S. Department of Housing and Urban Development on May 21, 2022, for HOME funds and on May 23, 2022, for Project-Based Vouchers.

FINANCIAL IMPACT:

This loan commitment will only affect the notes receivable balance sheet accounts of the fund. Per budgeting practice, the loan commitment is not built into the fiscal year appropriations budget process. The cumulative \$4.5 million loans, which will be funded at acquisition/construction loan closing anticipated in November 2022 (Fiscal Year 2022-23), and the increase to the 2020 NOFA of \$2.5 million will be funded with 100 percent Southern California Home Financing Authority, American Rescue Plan Act and/or HOME Investment Partnerships Program funding in OC Housing Fund 15G, Housing Asset Fund 170, OC Housing Authority Operating Reserves Fund 117, CEO Single Family Housing Fund 15B, Real Estate Development Program Fund 135 and/or Mental Health Services Act Fund 12A.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

- Attachment A – Amended Authorizing Resolution
- Attachment B – California Code of Regulations Title 14 Section 15378
- Attachment C – Code of Federal Regulations Title 24 Subtitle A Part 58
- Attachment D – Ground Lease
- Attachment E – California Tax Credit Allocation Committee Lease Rider

AUTHORIZING RESOLUTION

RESOLUTION NO. _____

A RESOLUTION OF THE GOVERNING BODY OF ORANGE COUNTY BOARD OF SUPERVISORS AUTHORIZING JOINT APPLICATION TO AND PARTICIPATION IN THE HOMEKEY PROGRAM**WHEREAS:**

- A. The Department of Housing and Community Development ("**Department**") has issued a Notice of Funding Availability, dated September 9, 2021 ("**NOFA**"), for the Homekey Program ("**Homekey**" or "**Program**"). The Department has issued the NOFA for Homekey grant funds pursuant to Health and Safety Code section 50675.1.3 (Assem. Bill No. 140 (2021-2022 Reg. Sess.), § 20.).
- B. **The County of Orange** ("**Co-Applicant**") desires to jointly apply for Homekey grant funds with Community Development Partners and CM Mercy House CHDO LLC ("**Corporations**"). Therefore, Co-Applicant is joining Corporations in the submittal of an application for Homekey funds ("**Application**") to the Department for review and consideration.
- C. The Department is authorized to administer Homekey pursuant to the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Homekey funding allocations are subject to the terms and conditions of the NOFA, the Application, the Department-approved STD 213, Standard Agreement ("**Standard Agreement**"), and all other legal requirements of the Homekey Program.

THEREFORE, IT IS RESOLVED THAT:

- 1. Co-Applicant is hereby authorized and directed to submit a joint Application to the Department in response to the NOFA, and to jointly apply for Homekey grant funds in a total amount not to exceed **\$11,000,000**.
- 2. If the Application is approved, Co-Applicant is hereby authorized and directed to enter into, execute, and deliver a Standard Agreement in a total amount not to exceed **\$11,000,000**, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds from the Department and to participate in the Homekey Program, and all amendments thereto (collectively, the "**Homekey Documents**").
- 3. Co-Applicant acknowledges and agrees that it shall be subject to the terms and conditions specified in the Standard Agreement, and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof. Any and all activities, expenditures, information, and

timelines represented in the Application are enforceable through the Standard Agreement. Funds are to be used for the allowable expenditures and activities identified in the Standard Agreement.

- 4. **Dylan Wright**, or his designee, is authorized to execute the Application and the Homekey Documents on behalf of Co-Applicant for participation in the Homekey Program.

PASSED AND ADOPTED this _____ day of _____, 202_, by the following vote:

AYES: [#] NAYES: [#] ABSTAIN: [#] ABSENT: [#]

The undersigned, **Robin Stieler/COB** of Co-Applicant, does hereby attest and certify that the foregoing is a true and full copy of a resolution of the governing body adopted at a duly convened meeting on the date above-mentioned, and that the resolution has not been altered, amended, or repealed.

SIGNATURE: _____

DATE: _____

NAME: _____

TITLE: _____

[NOTICE AND INSTRUCTIONS APPEAR ON THE FOLLOWING PAGE]

NOTICE AND INSTRUCTIONS

1. **Notice.** The Department is providing this template Authorizing Resolution as informational guidance only. The Department encourages each Co-Applicant to consult with professional legal counsel during the development of its own formal, legally binding statement that it is authorized to apply to and participate in the Homekey Program.
 - a. Please note, however, that any limitations or conditions on the authority of the signatory or signatories to execute the Application or the Homekey Documents may result in the Department rejecting the Authorizing Resolution.
2. **Accuracy, Verification.** The Department will verify that this Authorizing Resolution comports with the legal authority and composition of Co-Applicant's governing body. Co-Applicant must timely notify the Department, in writing, of any factors that limit its ability to provide an Authorizing Resolution which is materially in line with this template.
3. **Dollar Amounts of Grant Awards.** The Department recommends identifying an authorized dollar amount that is at least double the anticipated award (based on current formula calculations). Award amounts are subject to change. If Co-Applicant is ultimately awarded an amount in excess of the amount identified in the Authorizing Resolution, the Department will require a new Authorizing Resolution from Co-Applicant before execution of a Standard Agreement.
4. **Authorized Signatory or Signatories, Designee.** Co-Applicant, as a state, regional, or local public entity, may designate an authorized signatory by title only. In addition, Co-Applicant may authorize multiple signatories, so long as there is clarifying language as to whether the signatories are authorized to execute the Homekey Documents individually or collectively. In addition, Co-Applicant may authorize a designee of the authorized signatory to execute the Homekey Documents. In such case, Co-Applicant must append a supporting document (e.g., memorandum, meeting notes of official action), which indicates the name and title of the designee who is authorized to legally bind the governing body.
5. **Vote Count.** Please fill out the field by every voting category (i.e., Ayes, Nays, Abstain, Absent). If none, please indicate zero (0) for that field. The vote count must comport with the legal authority and membership of the Co-Applicant's governing body.
6. **Certification of Authorizing Resolution.** The individual who certifies the Authorizing Resolution cannot also be authorized to execute the Homekey Documents on behalf of Co-Applicant.

Cal. Code Regs. tit. 14 § 15378

Section 15378 - Project

- (a)** "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
- (1)** An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100- 65700.
 - (2)** An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (3)** An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- (b)** Project does not include:
- (1)** Proposals for legislation to be enacted by the State Legislature;
 - (2)** Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);
 - (3)** The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative. (Steinv.City of Santa Monica, (1980) 110 Cal. App. 3d 458;Friends of Sierra Madre v. City of Sierra Madre(2001) 25 Cal.4th 165);
 - (4)** The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.
 - (5)** Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.
- (c)** The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.
- (d)** Where the lead agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivisions (a)(2) or (a)(3), the lead agency shall

describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

Cal. Code Regs. Tit. 14, § 15378

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code; Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District, (1992) 9 Cal.App.4th 464; and Fullerton Joint Union High School District v. State Board of Education, (1982) 32 Cal.3d 779; Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County (1975) 51 Cal.App.3d 648; and Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98.

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of Note filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
 2. Amendment of subsection (a) and Note filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
 3. Amendment of subsections (b)(1)-(5) and amendment of Note filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
 4. Change without regulatory effect repealing subsection (b)(5) and amending Note filed 7-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
 5. Amendment of subsection (b)(3) and new subsection (b)(5) filed 9-7-2004; operative 9-7-2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
 6. Change without regulatory effect amending subsection (d) and Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
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Displaying title 24, up to date as of 5/24/2022. Title 24 was last amended 5/17/2022.

Attachment C

Title 24 - Housing and Urban Development**Subtitle A****- Office of the Secretary, Department of Housing and Urban Development**

- ▼ **Title 24** Housing and Urban Development Part / Section
- ▼ **Subtitle A** Office of the Secretary, Department of Housing and Urban Development 0 – 99
 - ▼ **Part 58** Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities 58.1 – 58.77
 - ▼ **Subpart A** Purpose, Legal Authority, Federal Laws and Authorities 58.1 – 58.6
 - § 58.1 Purpose and applicability.
 - § 58.2 Terms, abbreviations and definitions.
 - § 58.4 Assumption authority.
 - § 58.5 Related Federal laws and authorities.
 - § 58.6 Other requirements.
 - ▼ **Subpart B** General Policy: Responsibilities of Responsible Entities 58.10 – 58.18
 - § 58.10 Basic environmental responsibility.
 - § 58.11 Legal capacity and performance.
 - § 58.12 Technical and administrative capacity.
 - § 58.13 Responsibilities of the certifying officer.
 - § 58.14 Interaction with State, Federal and non-Federal entities.
 - § 58.15 Tiering.
 - § 58.17 *[Reserved]*
 - § 58.18 Responsibilities of States assuming HUD environmental responsibilities.
 - ▼ **Subpart C** General Policy: Environmental Review Procedures 58.21 – 58.23
 - § 58.21 Time periods.
 - § 58.22 Limitations on activities pending clearance.
 - § 58.23 Financial assistance for environmental review.
 - ▼ **Subpart D** Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification 58.30 – 58.38
 - § 58.30 Environmental review process.
 - § 58.32 Project aggregation.
 - § 58.33 Emergencies.
 - § 58.34 Exempt activities.
 - § 58.35 Categorical exclusions.
 - § 58.36 Environmental assessments.
 - § 58.37 Environmental impact statement determinations.
 - § 58.38 Environmental review record.
 - ▼ **Subpart E** Environmental Review Process: Environmental Assessments (EA's) 58.40 – 58.47

- § 58.40 Preparing the environmental assessment.
- § 58.43 Dissemination and/or publication of the findings of no significant impact.
- § 58.45 Public comment periods.
- § 58.46 Time delays for exceptional circumstances.
- § 58.47 Re-evaluation of environmental assessments and other environmental findings.
- ▼ **Subpart F** Environmental Review Process: 58.52 – 58.53
Environmental Impact Statement Determinations
 - § 58.52 Adoption of other agencies' EISs.
 - § 58.53 Use of prior environmental impact statements.
- ▼ **Subpart G** Environmental Review Process: 58.55 – 58.60
Procedures for Draft, Final and Supplemental Environmental Impact Statements
 - § 58.55 Notice of intent to prepare an EIS.
 - § 58.56 Scoping process.
 - § 58.57 Lead agency designation.
 - § 58.59 Public hearings and meetings.
 - § 58.60 Preparation and filing of environmental impact statements.
- ▼ **Subpart H** Release of Funds for Particular Projects 58.70 – 58.77
 - § 58.70 Notice of intent to request release of funds.
 - § 58.71 Request for release of funds and certification.
 - § 58.72 HUD or State actions on RROFs and certifications.
 - § 58.73 Objections to release of funds.
 - § 58.74 Time for objecting.
 - § 58.75 Permissible bases for objections.
 - § 58.76 Procedure for objections.
 - § 58.77 Effect of approval of certification.

This content is from the eCFR and is authoritative but unofficial.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental

Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Part 58 Environmental Review Procedures for Entities Assuming HUD

Environmental Responsibilities

Subpart A Purpose, Legal Authority, Federal Laws and Authorities

- § 58.1 Purpose and applicability.
- § 58.2 Terms, abbreviations and definitions.
- § 58.4 Assumption authority.
- § 58.5 Related Federal laws and authorities.
- § 58.6 Other requirements.

Subpart A - Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose and applicability.

- (a) **Purpose.** This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.
- (b) **Applicability.** This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:
 - (1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));
 - (2) [Reserved]
 - (3)
 - (i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

- (ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);
- (4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);
- (5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));
- (6)
 - (i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);
 - (ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and
 - (iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);
- (7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading "Annual Contributions for Assisted Housing" in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);
- (8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);
- (9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m));
- (10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:
 - (i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and
 - (ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);
- (11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

- (12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).
- (c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.
- (d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

§ 58.2 Terms, abbreviations and definitions.

- (a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:
- (1) **Activity** means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.
- (2) **Certifying Officer** means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.
- (3) **Extraordinary Circumstances** means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:
- (i) Actions that are unique or without precedent;
 - (ii) Actions that are substantially similar to those that normally require an EIS;
 - (iii) Actions that are likely to alter existing HUD policy or HUD mandates; or
 - (iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.
- (4) **Project** means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.
- (5) **Recipient** means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(b):

- (i) A State that does not distribute HUD assistance under the program to a unit of general local government;
 - (ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;
 - (iii) A unit of general local government;
 - (iv) An Indian tribe;
 - (v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under § 58.1(b)(6)(ii) or Section 8 assistance under § 58.1(b)(6)(iii), a public housing agency;
 - (vi) Any direct grantee of HUD for a special project under § 58.1(b)(7);
 - (vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;
 - (viii) With respect to the Self-Help Homeownership Opportunity Program under § 58.1(b)(9), any direct grantee of HUD.
 - (ix)
 - (A) With respect to NAHASDA assistance under § 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and
 - (B) With respect to the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), the Indian tribe.
 - (x) With respect to the Shelter Plus Care and Supportive Housing Programs under § 58.1(b)(3)(ii), nonprofit organizations and other entities.
- (6) **Release of funds.** In the case of the FHA Multifamily Housing Finance Agency Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.
- (7) **Responsible Entity.** Responsible Entity means:
- (i) With respect to environmental responsibilities under programs listed in § 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.
 - (ii) With respect to environmental responsibilities under the programs listed in § 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in § 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in § 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:
 - (A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

- (B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
 - (C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
- (8) **Unit Density** refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.
- (9) **Tiering** means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.
- (10) **Vacant Building** means a habitable structure that has been vacant for more than one year.
- (b) The following abbreviations are used throughout this part:
- (1) CDBG - Community Development Block Grant;
 - (2) CEQ - Council on Environmental Quality;
 - (3) EA - Environmental Assessment;
 - (4) EIS - Environmental Impact Statement;
 - (5) EPA - Environmental Protection Agency;
 - (6) ERR - Environmental Review Record;
 - (7) FONSI - Finding of No Significant Impact;
 - (8) HUD - Department of Housing and Urban Development;
 - (9) NAHA - Cranston-Gonzalez National Affordable Housing Act of 1990;
 - (10) NEPA - National Environmental Policy Act of 1969, as amended;
 - (11) NOI/EIS - Notice of Intent to Prepare an EIS;
 - (12) NOI/RROF - Notice of Intent to Request Release of Funds;
 - (13) ROD - Record of Decision;
 - (14) ROF - Release of Funds; and
 - (15) RROF - Request for Release of Funds.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.4 Assumption authority.

- (a) **Assumption authority for responsible entities: General.** Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution

of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) **Particular responsibilities of the States.**

- (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.
- (2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(c) **Particular responsibilities of Indian tribes.** An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) **Historic properties.**

- (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).
- (3) Federal historic preservation regulations as follows:
 - (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and
 - (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) **Floodplain management and wetland protection.**

- (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)
- (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

(c) **Coastal Zone Management.** The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) **Sole source aquifers.**

- (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).
- (2) Sole Source Aquifers (Environmental Protection Agency - 40 CFR part 149).

(e) **Endangered species.** The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) **Wild and scenic rivers.** The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) **Air quality.**

- (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency - 40 CFR parts 6, 51, and 93).

(h) **Farmlands protection.**

- (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).
- (2) Farmland Protection Policy (Department of Agriculture - 7 CFR part 658).

(i) **HUD environmental standards.**

- (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3).

(2)

(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

- (iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.
- (iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.
- (j) **Environmental justice.** Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(12) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).

(a)

- (1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
 - (i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and
 - (ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
- (2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.
- (3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.
- (4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

- (b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:
 - (1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and
 - (2) The person failed to obtain and maintain flood insurance.
- (c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.
- (d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

This content is from the eCFR and is authoritative but unofficial.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.
Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart B General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

§ 58.11 Legal capacity and performance.

§ 58.12 Technical and administrative capacity.

§ 58.13 Responsibilities of the certifying officer.

§ 58.14 Interaction with State, Federal and non-Federal entities.

§ 58.15 Tiering.

§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

Subpart B - General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

§ 58.11 Legal capacity and performance.

- (a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.
- (b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.
- (c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

- (d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5. The Certifying Officer must also:

- (a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and
- (b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar. 30, 1998]

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site

specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

- (a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:
 - (1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.
 - (2) Receive public notices, RROFs, and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.
- (b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

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Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental

Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart C General Policy: Environmental Review Procedures

§ 58.21 Time periods.

§ 58.22 Limitations on activities pending clearance.

§ 58.23 Financial assistance for environmental review.

Subpart C - General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

- (a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.
- (b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.
- (c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.
- (d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in

accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

- (e) **Self-Help Homeownership Opportunity Program (SHOP).** In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.
- (f) **Relocation.** Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart D Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

§ 58.32 Project aggregation.

§ 58.33 Emergencies.

§ 58.34 Exempt activities.

§ 58.35 Categorical exclusions.

§ 58.36 Environmental assessments.

§ 58.37 Environmental impact statement determinations.

§ 58.38 Environmental review record.

Subpart D - Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

- (a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.
- (b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

- (a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.
- (b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a

combination of water, sewer and street improvements and economic development activities); or a *combination of aggregation approaches*, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

- (c) The purpose of project aggregation is to group together related activities so that the responsible entity can:
 - (1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).
 - (2) Consider reasonable alternative courses of action.
 - (3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.
 - (4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.
- (d) **Multi-year project aggregation -**
 - (1) **Release of funds.** When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.
 - (2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

- (a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.
- (b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.34 Exempt activities.

- (a) Except for the applicable requirements of § 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:
- (1) Environmental and other studies, resource identification and the development of plans and strategies;
 - (2) Information and financial services;
 - (3) Administrative and management activities;
 - (4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
 - (5) Inspections and testing of properties for hazards or defects;
 - (6) Purchase of insurance;
 - (7) Purchase of tools;
 - (8) Engineering or design costs;
 - (9) Technical assistance and training;
 - (10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;
 - (11) Payment of principal and interest on loans made or obligations guaranteed by HUD;
 - (12) Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.
- (b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

- (a) **Categorical exclusions subject to § 58.5.** The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

- (1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
 - (2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
 - (3) Rehabilitation of buildings and improvements when the following conditions are met:
 - (i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;
 - (ii) In the case of multifamily residential buildings:
 - (A) Unit density is not changed more than 20 percent;
 - (B) The project does not involve changes in land use from residential to non-residential; and
 - (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:
 - (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
 - (4)
 - (i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
 - (ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
 - (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).
 - (5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
 - (6) Combinations of the above activities.
- (b) **Categorical exclusions not subject to § 58.5.** The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no

further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

- (1) Tenant-based rental assistance;
 - (2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
 - (3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
 - (4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
 - (5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.
 - (6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
 - (7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.
- (c) **Circumstances requiring NEPA review.** If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.
- (d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

- (a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.
- (b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

- (1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
 - (2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.
 - (3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.
- (c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.
- (d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where § 58.53 is applicable.
- (e) **Recommended EIS Format.** The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as necessary to meet specific program needs.

- (a) **ERR Documents.** The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:
- (1) Describe the project and the activities that the recipient has determined to be part of the project;
 - (2) Evaluate the effects of the project or the activities on the human environment;
 - (3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and
 - (4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).
- (b) **Other documents and information.** The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for

inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

This content is from the eCFR and is authoritative but unofficial.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental

Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart E Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

§ 58.45 Public comment periods.

§ 58.46 Time delays for exceptional circumstances.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

Subpart E - Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

- (a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.
- (b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
- (c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 and § 58.6.
- (d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
- (e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
- (f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.
- (g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

- (1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to § 58.43.
- (2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

- (a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.
- (b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by § 58.70. If the notices are released as a combined notice, the combined notice shall:
 - (1) Clearly indicate that it is intended to meet two separate procedural requirements; and
 - (2) Advise the public to specify in their comments which "notice" their comments address.
- (c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI)	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF)	7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices	15 days when published or, if no publication, 18 days when mailing and posting

[68 FR 56130, Sept. 29, 2003]

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

- (a) There is a considerable interest or controversy concerning the project;
- (b) The proposed project is similar to other projects that normally require the preparation of an EIS; or
- (c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

- (a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:
 - (1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
 - (2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
 - (3) The recipient proposes the selection of an alternative not in the original finding.
- (b)
 - (1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.
 - (2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.
 - (3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart F Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

§ 58.53 Use of prior environmental impact statements.

Subpart F - Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

- (a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:
 - (1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;
 - (2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

- (3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;
 - (4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.
- (b) The prior final EIS has been filed within five (5) years, and updated as follows:
- (1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;
 - (2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.
- (c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart G Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

§ 58.56 Scoping process.

§ 58.57 Lead agency designation.

§ 58.59 Public hearings and meetings.

§ 58.60 Preparation and filing of environmental impact statements.

Subpart G - Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

(a) **Factors to consider.** In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

- (2) The degree of interest in or controversy concerning the project.
 - (3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.
 - (4) The extent to which public involvement has been achieved through other means.
- (b) **Procedure.** All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:
- (1) State the date, time, place, and purpose of the hearing or meeting.
 - (2) Describe the project, its estimated costs, and the project area.
 - (3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.
 - (4) State the responsible entity's name and address and the name and address of its Certifying Officer.
 - (5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Preparation and filing of environmental impact statements.

- (a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.
- (b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:
 - (1) Five copies to EPA Headquarters;
 - (2) Five copies to EPA Regional Office;
 - (3) Copies made available in the responsible entity's and the recipient's office;
 - (4) Copies or summaries made available to persons who request them; and
 - (5) FEIS only - one copy to State, HUD Field Office, and HUD Headquarters library.
- (c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.
- (d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.
- (e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart H Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

§ 58.71 Request for release of funds and certification.

§ 58.72 HUD or State actions on RROFs and certifications.

§ 58.73 Objections to release of funds.

§ 58.74 Time for objecting.

§ 58.75 Permissible bases for objections.

§ 58.76 Procedure for objections.

§ 58.77 Effect of approval of certification.

Subpart H - Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by [§ 58.43](#) and [§ 58.45](#) before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

- (a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in [paragraph \(b\)](#) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in [§ 58.1\(b\)](#). The RROF and certification must be in a form specified by HUD.
- (b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in [§ 58.10](#), the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity

to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

- (c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

- (a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.
- (b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.
- (c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

- (a) The certification was not in fact executed by the responsible entity's Certifying Officer.

- (b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.
- (c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.
- (d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.
- (e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).
- (f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

- (a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.
- (b) Be dated when signed.
- (c) Describe the basis for objection and the facts or legal authority supporting the objection.
- (d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

- (a) **Responsibilities of HUD and States.** HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).
- (b) **Public and agency redress.** Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.
- (c) **Implementation of environmental review decisions.** Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.
- (d) **Responsibility for monitoring and training.**

- (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:
 - (i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;
 - (ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;
 - (iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;
 - (iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;
 - (v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.
- (2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.



GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is made and effective as of the _____ day of _____, 2022 (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“**County**”), CM MERCY HOUSE CHDO LLC, a California limited liability company (the sole member of which is Mercy House CHDO Inc., a California non-profit organization) (hereinafter called “**Tenant**”) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

RECITALS

A. County owns the Premises (as hereinafter defined) located at 2274 Newport Boulevard, Costa Mesa, CA 92627.

B. County agrees to lease the Premises to the Tenant for the purposes of the Project, as more fully defined hereafter, to entitle and redevelop a 94-unit (currently 79 units are permitted, however Tenant and City Building officials have agreed to get the additional units up to current code and in compliance with applicable laws prior to issuance of permits for additional phased work as detailed in Sec. 1.1.41) room motel commonly known as the “Motel 6.” Following certain rehabilitation work, the premises will be used for permanent supportive housing or any other use approved by the County, all as more fully described herein, upon the fulfillment of certain conditions precedent as set forth therein.

C. Concurrently with entering into this Lease, County and Tenant will (i) enter into one or more “Regulatory Agreement and Declaration of Restrictive Covenants” (hereinafter referred to as “**Regulatory Agreement(s)**”) which shall encumber the Tenant’s leasehold interest to be created by this Lease, and (ii) enter into one or more Loan Agreement(s) (hereinafter referred to as “**Loan Agreement(s)**”), under which the County and other funding sources agree to provide certain loan funds to the Tenant for the purposes of developing the Project.

NOW, THEREFORE, in consideration of the above Recitals, which are hereby incorporated into this Lease by reference, and mutual covenants and agreements hereinafter contained, County and Tenant mutually agree to the following:

ARTICLE I DEFINITIONS

1.1 **Definitions:** The following defined terms used in this Lease shall have the meanings set forth below. Other terms are defined in other provisions of this Lease and shall have the definitions given to such terms in such other provisions.

1.1.1. “**Affiliate**” shall mean, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.

1.1.2. Intentionally Deleted.

1.1.3. “**Aggregate Transfer**” shall refer to the total “Ownership Interest(s)” in Tenant transferred or assigned in one transaction or a series of related transactions (other than an Excluded Transfer) occurring since the latest of (a) the Effective Date, (b) the execution by Tenant of this Lease, or (c) the most recent Tenant Ownership Change; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of “Aggregate Transfer.”

1.1.4. “**Annual Operating Expenses**” means all regular and customary annual expenses incurred in relation to the operation of the Premises, including the Improvements, as reflected on the annual budget that Tenant shall prepare and abide by each year during the Term of this Ground Lease, commencing on the Commencement Date, as approved in writing by the County, in County’s reasonable discretion. Said Annual Operating Expenses shall include a reasonable property management and administrative fee, fees related to the tax credit syndication of the Premises, utility charges, operating and maintenance expenses, Project property taxes and Project insurance premiums, and such other costs as approved by the County, in his/her reasonable discretion. Tenant will deliver an annual budget for the following year no later than December 1 for each year following issuance of a permanent certificate of occupancy for the Improvements. County shall deliver any comments, or its approval to such operating budget within thirty (30) days of receipt thereof. If an operating budget for the following year has not been approved by County and Tenant prior to January 1 of such year, the annual operating budget from the previous year, increased by three percent (3%), with the actual cost of property tax and insurance premiums, shall apply until a new operating budget is approved. Notwithstanding the foregoing, in no event shall Annual Operating Expenses include any costs, fees, fines, charges, penalties, awards, judgments or expenses (including, but not limited to legal and accounting fees and expenses) which are due to or arising out of the Tenant’s (A) breach or default of any mortgage loan, (B) fraudulent acts or willful misconduct or (C) breach or default under any other contract, lease or agreement pertaining to the Project. Annual Operating Expenses shall also not include other expenses not related to the Project’s operations such as depreciation, amortization, accrued principal and interest expense on deferred payment debt and capital improvement expenditures.

1.1.5. “**Annual Project Revenue**” means all annual revenue generated by the Project from any source, including, but not limited to, rent payments, governmental assistance housing payments, laundry and other vending machine and pay telephone income. Notwithstanding the foregoing, Annual Project Revenue shall not include the following items: (a) security deposits from subtenants (except when applied by Tenant to rent or other amounts owing by subtenants); (b) capital contributions to Tenant by its members, partners or shareholders (including capital contributions required to pay deferred developer fee); (c) the proceeds of any loan, whether secured or unsecured, made to or for the benefit of Tenant; (d) condemnation or insurance proceeds; (e) there shall be no line item, expense, or revenue shown allocable to vacant unit(s) at the Project; or (f) receipt by an Affiliate of management fees or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the Project.

1.1.6. “**Auditor-Controller**” shall mean the Auditor-Controller, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.

1.1.7. “**Base Rent**” shall mean rent paid pursuant to Section 3.1.1.

1.1.8. “**Board of Supervisors**” shall mean the Board of Supervisors of the County of Orange, a political subdivision of the State of California, the governing body of the County.

1.1.9. “**Certificate of Occupancy**” shall mean a temporary or final certificate of occupancy (or other equivalent entitlement, however designated) which entitles Tenant to commence normal operation and occupancy of the Improvements.

1.1.10. “**Chief Real Estate Officer**” shall mean the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the County Board of Supervisors. The Chief Real Estate Officer shall have authority to administer the terms of this Lease, including the granting of approvals, waivers, and consents, as required hereunder, except to the extent any of such actions would increase the costs, or decrease the revenues of County hereunder

1.1.11. “**City**” shall mean the City of Costa Mesa, California.

1.1.12. “**Claims**” shall mean liens, claims, demands, suits, judgments, liabilities, damages, fines, losses, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.

1.1.13. Intentionally Deleted

1.1.14. “**Contractor**” shall mean Tenant’s general contractor for the Work to be performed.

1.1.15. “**County**” shall mean the County of Orange, a political subdivision of the State of California.

1.1.16. “**County’s Interest**” shall mean all of County’s interests in the real property, the Premises, this Lease and its existing and reversionary interest in the real property (as set forth in Section 5.4.3), Premises, as well as the Improvements upon the expiration of the Term or earlier termination thereof.

1.1.17. “**County Parties**” shall mean, collectively and individually, the County and its respective Affiliates, special districts, governing boards, agents, employees, members, officers, directors and attorneys.

1.1.18. “**Effective Date**” is defined in the introductory paragraph to this Lease.

1.1.19. “**Event of Default**” is defined in Section 11.1.

1.1.20. “**Excluded Transfer**” shall mean any of the following:

(a) A transfer by any direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or

indirect owner in Tenant's ownership structure) as of the Effective Date or the date on which a Tenant Ownership Change occurred as to the interest transferred, to any other direct or indirect partner, shareholder, or member of Tenant or to an entity exclusively controlled by such direct or indirect partner, shareholder or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family of any direct or indirect partner or member of Tenant who is an individual;

(b) A transfer of an Ownership Interest in Tenant or in constituent entities of Tenant (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings, and grandchildren); (ii) to a trust for the benefit of a member of the immediate family of the transferor; (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection is the result of gift, devise, intestate succession, or operation of law; or (iv) in connection with a pledge by any partners or members of a constituent entity of Tenant to an Affiliate of such partner or member;

(c) A transfer of a direct or indirect interest resulting from public trading in the stock or securities of an entity, when such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

(d) A mere change in the form, method, or status of ownership (including, without limitation, the creation of single-purpose entities) as long as the ultimate beneficial ownership remains the same as of the Effective Date, or is otherwise excluded in accordance with subsections (a) – (c) above;

(e) A transfer to an Affiliated nonprofit public benefit corporation or for-profit corporation, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company Affiliated with the Tenant or the Tenant's general partner, subject to the County and Agency's right to reasonably approve the agreement to effect such assignment or transfer;

(f) The lease, assignment of lease or sublease of any individual residential unit in the Improvements;

(g) A transfer of the Tenant's interest in the Premises by foreclosure or deed in lieu of foreclosure (i) to any bona fide third-party lender holding a lien encumbering the Premises (or its nominee), and (ii) by a Lender Foreclosure Transferee to a third-party made in accordance with Section 17.6.5;

(h) Transfers of any limited partnership or membership interest in the Tenant to an investor solely in connection with the tax credit syndication of the Premises in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Tax Credit Laws"), (including, without limitation, a subsequent transfer of the Limited Partner's interest to an Affiliate of the Limited Partner), provided, such syndication shall not extend the Term of this Lease;

(i) The grant or exercise of an option agreement or right of first refusal solely in connection with the tax credit syndication of the Premises in accordance with the Tax Credit Laws provided that the syndication shall not extend the Term of this Lease;

(j) The removal and replacement of one or both of Tenant's general partners pursuant to the terms of Tenant's Partnership Agreement as of the Effective Date and replacement by the Limited Partner, or an Affiliate thereof;

(k) Any assignment of the Lease by Tenant to an Affiliate of Tenant or to a Mortgagee as security in which there is no change to the direct and indirect beneficial ownership of the leasehold interest; or

(l) Any assignment of the Lease by Tenant to a limited partnership of which the Tenant is the managing general partner.

1.1.21. "**Force Majeure Event**" is defined in Article XIV.

1.1.22. "**Hazardous Material(s)**" is defined in Section 4.5.

1.1.23. "**HCD**" shall mean the California Department of Housing and Community Development.

1.1.24. "**Improvements**" shall mean and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made, constructed and/or rehabilitated on the Premises, in accordance with the terms of this Lease. During the entire Term, the Improvements, as they may be reconstructed or rehabilitated, will be restricted to the following uses:

(a) multifamily affordable housing
 (b) permanent supportive housing units and related services, and
 (c) related commercial and community-serving uses as needed for the siting of the affordable housing and supportive housing units, as approved by the County.

"**Permanent Supportive Housing**" has the same meaning as "**supportive housing**," as defined at Health & Safety Code Section 50675.14, subdivision (b)(2), except that "Permanent Supportive Housing" shall include associated facilities if used to provide services to housing residents. Permanent housing shall mean a housing unit where the landlord does not limit length of stay in the housing unit, the landlord does not restrict the movements of the tenant, and the tenant has a lease and is subject to the rights and responsibilities of tenancy. The Project and Permanent Conversion Work shall support Permanent Supportive Housing.

1.1.25. "**Includes**" shall mean "includes but is not limited to" and "**including**" shall mean "including but is not limited to."

1.1.26. "**Interest Rate**" shall mean the lower of: (a) the reference or prime rate of U.S. Bank National Association, in effect from time to time plus three percent (3%); or (b) the

highest rate of interest permissible under the Laws not to exceed the rate of twelve percent (12%) per annum.

1.1.27. “**Laws**” shall mean all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises, Improvements, and Work to be performed.

1.1.28. “**Lease**” shall mean this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.

1.1.29. “**Leasehold Estate**” is defined in Section 17.1.1.

1.1.30. “**Leasehold Foreclosure Transferee**” is defined in Section 17.1.2.

1.1.31. “**Leasehold Mortgage**” is defined in Section 17.1.3.

1.1.32. “**Leasehold Mortgagee**” is defined in Section 17.1.4.

1.1.33. “**Lender**” shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least \$2,000,000 and capital/statutory surplus or shareholder’s equity of at least \$500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender); or (c) a local, state or federal governmental entity, including but not limited to HCD, which provides predevelopment, acquisition, construction and/or permanent financing for Tenant’s acquisition and development of the Property.

1.1.34. “**Limited Partner**” shall mean any limited partner or investor member (and its successors and/or assigns) of Tenant and shall include all references to “investor” in this Ground Lease.

1.1.35 “**New Lease**” is defined in Section 17.7.1.

1.1.36. “**Operating Costs**” is defined in Section 3.4.1.

1.1.37. “**Ownership Interests**” shall mean the share(s) of stock, partnership interests, membership interests, other equity interests or any other direct or indirect ownership interests in Tenant, regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies, or trusts.

1.1.38. “**Partnership Related Fees**” shall mean the following fees of Tenant (or partners thereof pursuant to Tenant’s Partnership Agreement) which are actually paid including:

(i) a limited partner asset management fee payable to the Limited Partner in the annual amount of \$7,500 (increased annually by 3%); and

(ii) partnership management fee (administrative and/or managing general partner) payable to the general partners of Tenant in the aggregate annual amount of \$25,000 (increased annually by 3%).

1.1.39. “**Permanent Conversion Work**” or “**Work**” shall mean Tenant’s rehabilitation activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation and/or rehabilitation of utilities, street construction or improvement and grading or filling in or on the Premises necessary for the Project as set forth on Exhibit B.

1.1.40 “**Phase I**” shall mean the mandatory conversion of 40 units to Permanent Supportive Housing (PSH), of which 10 PSH units will target individuals who are at-risk of homelessness who meet the Mental Health Services Act (MHSA) eligibility criteria and 30 units for homeless veterans earning no more than 30% of the Area Median Income (AMI).

1.1.41 “**Phase II**” shall mean the conversion of the remaining 48 non-Homekey units constructed after Phase I. These remaining units will target 50% AMI rents for seniors, and there will be one unrestricted manager’s unit. Work to commence the Phase II conversion shall commence no later than ____ (“Phase II Commencement Date”) and shall be completed no later than __[DATE TBD]____ (“Phase II Completion Date”). If Phase II is not commenced by the Phase II Commencement Date, then County has the right, but not the obligation, to terminate the Lease in whole or in part in the County’s sole discretion. During the entire Term of this Lease, and regardless of Phase II commencing or being completed, Tenant shall always remain responsible for the entire Premises, whether or not the entire Premises is utilized by Tenant for the uses authorized under this Lease.

1.1.42. “**Person**” shall include firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

1.1.43. “**Premises**” shall mean that certain real property containing approximately 1.17 acres located at 2274 Newport Blvd, Costa Mesa, CA 92627, and its improvements, parking areas, and fixtures affixed thereto together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant shall rehabilitate and/or construct, as necessary, the existing motel, the Motel 6 into permanent supportive housing. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.44. “**Project**” shall mean the completed Work for the Tenant’s rehabilitation and/or construction of the Premises, as necessary, for its use as “Permanent Supportive Housing” as defined above, or any other use approved by the County other than the Phase I Work.

1.1.45. “**Rent**” shall mean and includes the Base Rent and Additional Rent payable by Tenant under this Lease.

1.1.46. “**Residual Receipts**” means the Annual Project Revenue less (A) Annual Operating Expenses (hereinafter defined), (B) obligated debt service on Leasehold Mortgages for the funding of the Project, or as otherwise approved pursuant to Section 17.2, below, (C) payment obligations approved in writing by the County at the closing of the construction financing for the Project, (D) Partnership Related Fees (including accrued but unpaid Partnership Related Fees from the prior year or years), (E) repayment of loans, if any, made by Limited Partner to Tenant for development and/or operating expense deficits on terms reasonably acceptable to the County, (F) repayment of loans, if any, made by a general partner of Tenant solely for development and/or operating expense deficits on terms reasonably acceptable to the County, (G) deferred developer fee, and (H) scheduled deposits to reserves approved in writing by the County at the closing of the construction financing for the Project (or such higher reserve deposits as may be reasonably required by the Limited Partner or any Leasehold Mortgagee).

1.1.47. “**Risk Manager**” shall mean the Manager of County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors, or designee, or upon written notice to Tenant, such other person as may be designated by the City Council.

1.1.48. “**Taxes**” is defined in Section 3.11.2.

1.1.49. “**TCAC**” is defined as the California Tax Credit Allocation Committee.

1.1.50 “**Tenant Ownership Change**” shall mean (a) any transfer or assignment by Tenant of the Leasehold Estate or (b) any “Aggregate Transfer” of at least twenty five percent (25%) of the “Ownership Interest(s)” in Tenant, in each case that is not an “Excluded Transfer.”

1.1.51. “**Tenant’s Partnership Agreement**” shall mean an Amended and Restated Agreement of Limited Partnership to be entered into in connection with the closing of constructing financing for the Project, a copy of which will be provided to the County.

1.1.52. “**Term**” is defined in Section 2.2.

1.1.53. “**Transfer**” is defined in Section 10.1.1.

1.1.54. “**Transfer Notice**” is defined in Section 10.4.

1.1.55. “**Treasurer-Tax Collector**” shall mean the Treasurer-Tax Collector, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as may be designated by the Board of Supervisors.

1.1.56. “**Utility Costs**” is defined in Section 3.4.1.

ARTICLE II
LEASE OF PROPERTY

2.1 Lease of Premises.

2.1.1. Leasehold. County hereby leases the Premises to Tenant for the Term for the purposes of the Project, and Tenant hereby leases the Premises from County for the Term, subject to the terms, conditions, covenants, restrictions and reservations of this Lease.

2.1.2. Warranty of Peaceful Possession. County covenants and warrants that, subject to the Tenant's payment of Rent and performance and observation of all of the covenants, obligations and agreements herein contained and provided to Tenant, Tenant shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise all of its rights hereunder. Except as otherwise set forth herein, the County covenants and agrees that they shall not grant any mortgage or lien on or in respect of its fee interest in the Premises unless the same is expressly subject and subordinate to this Lease or any New Lease.

2.2 **Term**. The "**Term**" of this Lease shall commence on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Standard Time on the Fifty-Fifth (55th) anniversary of the Commencement Date with a conditional extension to the Seventy-Fifth (75th) anniversary provided that TCAC verifies that the Tenant has met all the requirements and criteria of the program and ensures the continued affordability and habitability, unless sooner terminated as a result of Tenant's non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease.

2.3 **Termination at End of Term**. This Lease shall terminate, without need of further notice by any Party, at 12:00 midnight Pacific Standard Time on the last day of the Term.

2.4 **Condition of the Premises**. **TENANT HEREBY ACCEPTS THE PREMISES "AS IS" AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. COUNTY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT'S PROPOSED USES. COUNTY MAKE NO COVENANTS OR WARRANTIES, IMPLIED OR OTHERWISE, RESPECTING THE CONDITION OF THE SOIL, SUBSOIL, OR ANY OTHER CONDITIONS OF THE PREMISES OR THE PRESENCE OF HAZARDOUS MATERIALS, NOR DOES COUNTY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED REHABILITATION OR USE BY TENANT. COUNTY SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING THEREFROM. COUNTY SHALL NOT BE REQUIRED OR OBLIGATED TO MAKE ANY CHANGES, ALTERATIONS, ADDITIONS, IMPROVEMENTS OR REPAIRS TO THE PREMISES. TENANT SHALL RELY ON ITS OWN INSPECTION AS TO THE SUITABILITY OF THE PREMISES FOR THE INTENDED USE.**

TENANT INITIALS: _____

2.5 **Limitations of the Leasehold**. This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record as of the date hereof or otherwise disclosed to Tenant prior to the date hereof. Nothing contained in

this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's interest therein.

2.6 Tenant's Investigation. Tenant acknowledges that it is solely responsible for investigating the Premises to determine the suitability thereof for the uses contemplated by Tenant. Tenant further acknowledges by executing this Lease that it has completed its investigation and has made such determinations as Tenant believes may be required under the circumstances.

ARTICLE III TOTAL RENT

3.1 Base Rent. As of the Effective Date, Tenant made an initial Base Rent payment to County in the amount of [\$7,900,000]. Beginning on the Residual Receipts Base Rent Commencement Date (as defined below), Tenant shall pay to the County the Base Rent as set forth herein.

3.1.1 Base Rent. Beginning on the Residual Receipts Base Rent Commencement Date, Tenant shall make annual payments to County in an amount equal to the County Proportionate Share (as defined below) of fifty percent of available Residual Receipts (as defined above), but only to the extent said Residual Receipts are available ("**Base Rent**"). Base Rent shall only become due after the Tenant has repaid those certain loans from the County, evidenced each by a Loan Agreement, Promissory Note and Leasehold Deed of Trust (collectively, the "**County Loan Documents**"), in amounts of \$2,500,000 for the County's Mental Health Services Act (MHSA) permanent loan and \$2,000,000 for the Southern California Home Financing Authority's (SCHFA) loan (collectively the "**County Loans**") and that certain loan from the City of Costa Mesa Housing Authority (the "**Housing Authority**") in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000), as documented in a separate loan agreement and promissory note between the Housing Authority and Tenant ("**Housing Authority Loan**"), and that certain loan from Century Housing (the "**Acquisition Loan**") in the amount of Seven Million Nine Hundred Thousand Dollars (\$7,900,000), and the anticipated Seller Carryback Loan to be borrowed concurrently with the payoff of the Acquisition Loan at the Phase II closing in the anticipated amount of [\$_____] (the "**Seller Carryback Loan**"), and the anticipated Orange County Housing Finance Trust Loan to the borrower concurrently with the payoff of the Acquisition Loan at the Phase II closing in the anticipated amount of [\$_____] (the "**OCHTF Loan**"), provided that the amount of the Seller Carryback Loan and the OCHTF Loan is subject to change between the Effective Date and the Phase II closing date. The "**County Proportionate Share**" is a fraction, the numerator of which is equal to the original principal amount of the County Loans, and the denominator of which is equal to the original principal amounts of the County Loans, the Housing Authority Loan, the Seller Carryback Loan and the OCHTF Loan, and shall be determined as of the Phase II closing date. Notwithstanding the foregoing, Landlord acknowledges that the percentage of Residual Receipts to be paid as Base Rent, may be decreased, with the prior written consent of the County, if Tenant secures additional financing, including but not limited to any County Loan Agreement, that is to be paid out of Residual Receipts. Any reduction of the Base Rent shall be memorialized in an amendment to this Lease executed by the Tenant and the Chief Real Estate Officer.

3.2 Net Refinancing Proceeds/Net Syndication Proceeds. Any net refinancing and net syndication proceeds received by Tenant shall be used to pay any unpaid Base Rent. For purposes of

this Section 3.2, such proceeds shall be net of all of the following: closing costs; costs to rehabilitate the Project, including the costs necessary to obtain refinancing or syndication proceeds (such as consultant, legal, and other consultant costs); the soft costs related to the rehabilitation (such as architecture, engineering and other consultant costs, and all required relocation costs), and; all hard costs of the rehabilitation, all of which have been reviewed and reasonably approved by the Lessor. Additionally, the Tenant's right and obligation to use such net proceeds to pay Base Rent is subject to the rights of Leasehold Mortgagees to control the use of such proceeds pursuant to the terms of their respective loan documents, all of which have been reviewed and reasonably approved by the Lessor. Without limiting application of those loan documents, in no case shall Tenant be permitted to retain proceeds from the net refinancing and net syndication without the prior written consent of the Lessor, until full satisfaction of the unpaid Base Rent. Notwithstanding the foregoing, this Section 3.2 shall not apply to (i) any Excluded Transfer or (ii) any financing described in Section 17.2.

3.3 Triple Net Rent. It is the intent of the Parties that all Rent shall be absolutely net to County and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term as a result of Tenant's use and occupancy of the Premises. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the Parties, shall County be obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.

3.3 Insufficient Funds. For purposes of this Section 3.3, Rent shall have the same meaning as stated in Section 1.1.42. If any payment of Rent or other fees made by check is returned due to insufficient funds or otherwise, County shall have the right to require Tenant to make all subsequent Rent payments by cashier's check, certified check or automated clearing house debit system. All Rent or other fees shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Tenant or receipt by County of a lesser amount than the Rent or other fees due shall be deemed to be other than on account of the Rent or other fees due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County's right to recover the balance of the Rent or other fees or pursue any other remedy available to the County in this Lease.

3.4 Intentionally Deleted.

3.5 Additional Rent.

3.5.1. Additional Rent. During the Term, the Base Rent shall be absolutely net to County so that all costs (including but not limited to Operating Costs and Utility Costs, as defined below), fees, taxes (including but not limited to Real Estate Taxes and Equipment Taxes, as defined below), charges, expenses, impositions, reimbursements, and obligations of every kind relating to the Premises shall be paid or discharged by Tenant as additional rent ("**Additional Rent**"). Additional Rent shall also include such amounts as described in Article XI. As more particularly set forth in Sections 3.5.3 and 3.5.6, below, Tenant has the right to pay under protest the foregoing Additional Rent, as applicable, and defend against the same. Any imposition rebates shall belong to Tenant.

3.5.2. Taxes. During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, “Taxes” shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County in the Premises or any payments in lieu of taxes required to be made by County, including, but not limited to, the following:

(a) Any assessment, tax, fee, levy, improvement district tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of Tenant and County that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of “Taxes” for the purpose of this Lease.

(b) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(c) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on the Tenant’s interest under this Lease;

(d) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of “Taxes,” including any additional tax the nature of which was previously included within the definition of “Taxes,” shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.

3.5.3. Contest of Taxes. Tenant shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises and/or Improvements or any part thereof; provided, however, that the contest, opposition or objection must be filed before such time the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to County a good and sufficient undertaking in an amount specified by County and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties,

costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant's contest, opposition or objection to such tax, assessment or other charge.

3.5.4. Payment by County. Should Tenant fail to pay any Taxes required by this Article III to be paid by Tenant within the time specified herein, subject to Tenant's right to contest such Taxes in accordance with Section 3.5.3, and if such amount is not paid by Tenant within fifteen (15) days after receipt of County's written notice advising Tenant of such nonpayment, County may, without further notice to or demand on Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event Tenant shall promptly on written demand of County reimburse County for the full amount paid by County in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

3.5.5. Operating Costs. Tenant shall pay all Operating Costs during the Term prior to delinquency. As used in this Lease, the term "**Operating Costs**" shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement, replacement or repair of the Improvements and/or the Premises.

3.5.6. Utility Costs. Tenant shall pay all Utility Costs during the Term prior to delinquency. As used in this Lease, the term "**Utility Costs**" shall include all charges, surcharges, taxes, connection fees, service fees and other costs of installing and using all utilities required for or utilized in connection with the Premises and/or the Improvements, including without limitation, costs of heating, ventilation and air conditioning for the Premises, costs of furnishing gas, electricity and other fuels or power sources to the Premises, and the costs of furnishing water and sewer services to the Premises. Tenant agrees to indemnify and hold harmless the County against any liability, claim, or demand for the late payment or non-payment of Utility Costs.

ARTICLE IV USE OF PREMISES

4.1 Permitted Use of Premises. Tenant shall use the Premises for the Project, including the rehabilitation, construction, entitlement, operation, maintenance, replacement and repair (as necessary to perform the Work and complete the Project) of the Improvements as follows:

4.1.1. Required Services and Uses. County's primary purpose for entering into this Lease is to promote the development of the Project consistent with this Lease. In furtherance of that purpose, Tenant shall rehabilitate and during the entire Term operate, maintain, replace and repair the Improvements in a manner consistent with the Laws and for the following uses:

- (a) multifamily affordable housing, and appurtenant improvements, including, without limitation, parking,
- (b) permanent supportive housing units and related services, and
- (c) related commercial and community-serving uses, as approved by the County.

4.1.2. Ancillary Services and Uses. Subject to the prior written approval of County, which approval may be granted or withheld in the sole discretion of the County, Tenant may provide

those additional services and uses which are ancillary to and compatible with the required services and uses set forth in Section 4.1.1., above.

4.1.3. Additional Concessions or Services. Tenant may establish, maintain, and operate such other additional facilities, concessions, and services as Tenant and County may jointly from time to time reasonably determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by Law for the sole purpose to provide affordable housing and/or emergency shelter.

4.1.4. Restricted Use. The services and uses listed in this Section 4.1, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises unless approved in writing by the County, which approval may be granted or withheld in the sole discretion of the County.

4.1.5. Continuous Use. During the Term, Tenant shall continuously conduct Tenant's business in the Premises in the manner provided under this Lease and shall not discontinue use of the Premises for any period of time except in the case of a Force Majeure Event or as permitted in advance and in writing by the County.

4.1.6. Alcohol Restrictions. Tenant shall not permit the sale of alcoholic beverages on the Premises.

4.1.7. Permits and Licenses. Tenant shall be solely responsible to obtain, at its sole cost and expense, any and all permits, licenses or other approvals required for the uses permitted herein and shall maintain such permits, licenses or other approvals for the entire Term.

4.2 Nuisance; Waste. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises and Improvements or any part thereof. Tenant shall not commit or allow to be committed any waste in or upon the Premises or Improvements and shall keep the Premises and the Improvements thereon in good condition, repair and appearance, ordinary wear and tear excepted.

4.3 Compliance with Laws. Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws. Tenant shall have the right to contest, in good faith, any such Laws, and to delay compliance with such Laws during the pendency of such contest (so long as there is no material threat to life, health or safety that is not mitigated by Tenant to the satisfaction of the applicable authorities). County may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to County, and Tenant shall indemnify, defend (with attorneys acceptable to County), and hold harmless the County from any and all claims, liabilities, losses, damages, or actions of any kind and nature, including reasonable attorneys' fees, arising or related to Tenant's failure to observe or comply with the contested Law during the pendency of the contest.

4.4 Hazardous Materials.

4.4.1. **Definition of Hazardous Materials.** For purposes of this Lease, the term “**Hazardous Material**” or “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including, without limitation, the County acting in its governmental capacity, the State of California or the United States government.

4.4.2. **Use of Hazardous Materials.** Except for those Hazardous Materials which are customarily used in connection with the rehabilitation, operation, maintenance and repair of the Improvements or used in connection with any permitted use of the Premises and Improvements under this Lease (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water).

4.4.3. **Tenant Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, and excluding Hazardous Materials existing on the Premises prior to the Effective Date (the “**Existing Hazardous Materials**”), results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to cause the Premises to be returned to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant Parties, excluding the Existing Hazardous Materials. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the County. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by County.

4.4.4. **Indemnification for Hazardous Materials.**

(a) To the fullest extent permitted by law, Tenant hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to County) County, its elected officials, officers, employees, agents, independent contractors, and the Premises, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable (collectively, “**Liabilities**”), arising out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from,

under or about the Premises by Tenant or Tenant Parties, and excluding all Existing Hazardous Materials.

(b) The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

(c) The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination; provided, however, that the indemnity contained in this Section 4.4.4 shall not apply to any Liabilities arising or occurring (a) prior to the Effective Date of this Ground Lease, (b) after the expiration or earlier termination of the Term of this Ground Lease, or (c) as a result of the grossly negligent or wrongful acts or omissions of County.

4.5 Access by County. County reserves the right for County and its authorized representatives to enter the Premises upon two (2) business days' prior written notice to Tenant, during normal business hours, in order to determine whether Tenant is complying with Tenant's obligations hereunder, or to enforce any rights given to County under this Lease. County and its representatives shall report to the Tenant's on-site office and must be accompanied by a representative of Tenant at all times while on the Property and obey Tenant's rules and regulations. Tenant acknowledges County have the authority to enter the Premises and perform work on the Premises at any time as needed to provide immediate or necessary protection for the general public. County will take all necessary measures not to unreasonably interfere with Tenant's business at the Premises in exercising its rights under this Section.

County shall indemnify and hold Tenant harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys' fees, which results from County's willful misconduct or gross negligence, or willful misconduct or gross negligence committed by any party acting under County's authority, of the rights granted by this Section 4.5.

ARTICLE V WORK ON IMPROVEMENTS

5.1 Work on Improvements.

5.1.1. Rehabilitation for Permanent Supportive Housing. Upon the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from County in its governmental capacity, or otherwise), Tenant shall cause the Work to be performed and the Improvements to be completed on the Property in compliance with Exhibit B.

5.1.2. Preconditions. No Work shall be commenced, and no building or other materials shall be delivered to the Premises, until:

(a) Tenant has obtained a permit through the City, submitted Project design, conceptual development, plans and special provisions for the Work in accordance with the County's criteria, standard and practices;

(c) Tenant has given County written notice of the proposed commencement of Work on the Premises or the delivery of construction materials in order to allow County to take all

necessary actions under California Civil Code section 3094, including posting of a notice of non-responsibility at the Premises; and

(d) Tenant has provided to County evidence that (i) Tenant has entered into a Construction Contract with a Contractor in accordance with Section 5.2 below, (ii) Tenant has secured the construction funding required under Section 5.1.4 below, and (iii) Tenant has provided County with assurances sufficient to complete the Project in accordance with Section 5.3 below.

5.1.3. Utilities. Tenant, at no cost to County, shall perform any necessary rehabilitation with respect to the water, gas, heat, light, power, air conditioning, telephone, broadband internet, and other utilities and related services supplied to and/or used on the Premises at Tenant's sole cost and expense for the purposes of conducting Tenant's operations thereon. All such utilities shall be separately metered from any utilities which may be used by County in conducting its operations, if any, on or about the Premises. Nothing contained in this Section is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

5.1.4. Construction Funding. Prior to commencement of any Work, Tenant shall provide to County evidence reasonably satisfactory to County of funding available to Tenant that is sufficient to pay for Tenant's estimated total cost of the Work, which evidence may consist of (i) a written commitment to Tenant from a Lender selected by Tenant to provide a construction loan to Tenant for the purpose of the Work (which may be secured by a Leasehold Mortgage encumbering Tenant's leasehold interest under this Lease), (ii) actual equity funds then held by Tenant or irrevocably committed to be paid to Tenant for the purpose of the Work, or (iii) any combination of the foregoing. Tenant may from time to time change any of the foregoing funding sources and the allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of rehabilitating the Improvements, provided that Tenant shall promptly notify County of any such change.

5.1.5. Compliance with Laws and Permits. Tenant shall cause all Work to be performed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the Project. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County, as a Party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

5.1.6. Reports. Not less than monthly from the commencement of the Work, Tenant shall provide County with written Project status reports in the form of AIA No. G702 ("**Application and Certification for Payment**") or comparable form, augmented by oral reports if so requested by County.

5.1.7. Certificate of Occupancy. Tenant shall provide County with a copy of the Certificate of Occupancy promptly following issuance thereof.

5.1.8. Insurance. Tenant (or the Contractor, as applicable) shall deliver to County both (i) certificates of insurance evidencing coverage for "builder's risk," as specified in Section 8.1, and (ii) evidence of worker's compensation insurance, which provide the requisite insurance levels in accordance with Article VIII, for all persons employed in connection with the Work on the Premises

and with respect to whom death or bodily injury claims could be asserted against County or the Premises. Tenant shall (or shall cause Contractor to) maintain, keep in force and pay all premiums required to maintain and keep in said insurance herein at all times during which construction Work is in progress.

5.1.9. Mechanic's Liens.

(a) **Payment of Liens.** Tenant shall pay or cause to be paid the total cost and expense of all "Work of Improvement," as that phrase is defined in the California Mechanics' Lien law in effect and as amended from time to time. Tenant shall not suffer or permit to be enforced against the Premises or Improvements or any portion thereof, any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work of improvement, however it may arise. Tenant may, however, in good faith and at Tenant's sole cost and expense contest the validity of any such asserted lien, claim, or demand, provided Tenant (or any contractor or subcontractor, as applicable) has furnished the release bond (if required by County or any construction lender) required in California Civil Code section 8000 et seq. (or any comparable statute hereafter enacted for providing a bond freeing the Premises from the effect of such lien claim). In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, and provided the lien is not the result of actions of, or work performed by, the County, Tenant shall either:

- (1) Record a valid Release of Lien, or
- (2) Procure and record a bond in accordance with Section 8424 of the Civil Code, which releases the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien, or
- (3) Post such security as shall be required by Tenant's title insurer to insure over such lien or stop-notice, or
- (4) Should Tenant fail to accomplish either of the three optional actions above within 30 days after Tenant receives notice of the filing of such a lien or stop-notice, it shall constitute an Event of Default hereunder.

(b) **Indemnification.** Tenant shall at all times indemnify, defend with counsel approved in writing by County and hold County harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with rehabilitation, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including reasonable attorneys' fees and costs, but excluding any liability to the extent resulting from the gross negligence or willful misconduct of County, and excluding any liens resulting from the actions of, or work performed by, the County.

(c) **Protection Against Liens.** County shall have the right to post and maintain on the Premises any notices of non-responsibility provided for under applicable California law. During the course of the Work, Tenant shall obtain customary mechanics' lien waivers and releases. Upon completion of the Project, Tenant shall record a notice of completion in accordance with applicable law. Promptly after completion of the Project, Tenant shall (or shall cause

Contractor to) record a notice of completion as defined and provided for in California Civil Code section 8000 *et seq.*

(d) County's Rights. If Tenant (or any contractor or subcontractor, as applicable) does not cause to be recorded the bond described in California Civil Code section 8000 *et seq.* or otherwise protect the Premises and Improvements under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of judgment by lawful means or to pay the judgment, County shall have the right, but not the duty to pay or otherwise discharge, stay or prevent the execution of any such judgment or lien or both. Upon any such payment by County, Tenant shall immediately upon receipt of written request therefor by County, reimburse County for all sums paid by County under this paragraph together with all County reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. No Responsibility. Any approvals by County with respect to any Improvements shall not make County responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold County harmless from and against all liability and all claims of liability (including, without limitation, reasonable attorneys' fees and costs) arising during the Term of this Lease for damage or injury to persons or property or for death of persons arising from or in connection with the Improvement or construction thereof, but excluding any liability to the extent resulting from the active negligence or willful misconduct of County, and excluding any liens resulting from the actions of, or work performed by, the County.

5.2 Construction Contracts.

5.2.1. Construction Contract. Tenant shall enter into a written contract with a general contractor ("**Contractor**") for the Work and completion of the Project. All Work shall be performed by contractors and subcontractors duly licensed as such under the laws of the State of California. Tenant shall give County a true copy of the contract or contracts with the Contractor.

5.2.2. Assignment to County. Tenant shall obtain the written agreement of the Contractor that, at County election and in the event that Tenant fails to perform its contract with the Contractor, such Contractor will recognize County as the assignee of the contract with the Contractor, and that County may, upon such election, assume such contract with credit for payments made prior thereto. Notwithstanding the foregoing, the County's rights under this Section 5.2.2 are hereby made subject and subordinate to the lien of each Leasehold Mortgage.

5.3 Tenant's Assurance of Construction Completion. Prior to commencement of construction of the Work, or any phase thereof, within the Premises by Tenant, Tenant shall furnish to County evidence that assures County that sufficient monies will be available to complete the Work. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

5.3.1. Performance bond and labor and materials bond in a principal sum equal to the total estimated construction cost supplied by Contractor or subcontractors, provided said bonds are issued jointly to Tenant, County, and any Leasehold Mortgagees as obligees.

5.3.2. Irrevocable letter of credit issued to County from a financial institution to be in effect until County acknowledges satisfactory completion of the Work;

5.3.3. Cash deposited with the County (may be in the form of cashier's check or money order or may be electronically deposited);

5.3.4. A completion guaranty, in favor of County from the Tenant, in a form reasonably acceptable to County, coupled with a repayment guaranty in favor of the senior construction lender for its loan;

5.3.4. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to County. All bonds and letters of credit shall be in a form acceptable to County, and County's Risk Manager in their reasonable discretion, and shall insure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to Work within the Premises.

Tenant shall provide or cause its Contractor to provide payment and/or performance bonds in connection with the construction of the Work and shall name the County as an additional obligee on, with the right to enforce, any such bonds.

5.4 Ownership of Improvements.

5.4.1. For purposes of this Section 5.4, "**Term**" shall have the meaning stated in Section 2.2.3.

5.4.2. **During Term.** Title to all Improvements on the Premises, including Improvements existing on the Effective Date (reflected in the Bill of Sale attached hereto as **Exhibit E**), and as rehabilitated, and/or any new Improvements that are constructed or placed on the Premises by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. Any and all depreciation, amortization and tax credits for federal or state purposes relating to the Improvements located on the Premises and any and all additions thereto shall be deducted or credited exclusively by Tenant during the Term. The Parties agree for themselves and all persons claiming under them that the Improvements are real property.

5.4.3. **Upon Expiration or Earlier Termination of Term.** All Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become County's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to County in good order, condition and repair consistent with the requirements of this Lease and in compliance with all applicable laws and regulations for the occupancy of the Project, taking into account reasonable wear and tear and the age of the Improvements. In order to ensure that Tenant has sufficient funds reserved to make certain necessary repairs and/or replacements to the Improvements so as to meet its obligation stated herein, County, five (5) years prior to the expiration of the Term, may request, and Tenant must deliver, an estimate showing estimated costs of all repairs and/or replacements necessary to allow Tenant to

deliver possession of the Premises and the Improvements to County in a well-maintained condition. If funds in the Capital Improvement Fund, as more particularly described in Section 5.6, below, are insufficient to bring the Improvements into compliance with this Section 5.4.3, Tenant shall be solely responsible for securing any funding necessary to perform any rehabilitation or maintenance required to timely bring the Improvements into compliance with this Section 5.4.3, which funding shall not be secured by the Improvements on the Premises.

5.5 “AS-BUILT” Plans. Within sixty (60) days following completion of any substantial improvement within the Premises, including the Work, Tenant shall furnish the County a complete set of reproducible and two sets of prints of “As-Built” plans and a magnetic tape, disk or other storage device containing the “As-Built” plans in a form usable by County, to County’s satisfaction, on County’s computer aided mapping and design (“CAD”) equipment. CAD files are also to be converted to Acrobat Reader (pdf format), which shall be included on the disk or CD ROM. In addition, Tenant shall furnish County copy of the final construction costs for the construction of such improvements.

5.6 Capital Improvement Fund.

5.6.1. As of the Commencement Date, Tenant shall establish and maintain, for the remainder of the Term (as “Term” is defined in Section 2.2), a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.6 designated to pay for Permitted Capital Expenditures (as defined below) for the Improvements during the Term of this Lease.

5.6.2. Tenant and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Project (“**Permitted Capital Expenditure(s)**”).

5.6.3. The Capital Improvement Fund shall not be used to fund any portion of the cost of the Work. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary maintenance expenditures or maintenance, repairs or replacements that keep the Improvements in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied or constitute qualifying aesthetic improvements. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Tenant.

5.6.4. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to County’s written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the County applicable invoices, evidence of payment and other back-up materials concerning the use of amounts from the Capital Improvement Fund.

5.6.5. The Capital Improvement Fund shall be held in an account established with a Lender acceptable to the County, into which deposits shall be made by Tenant pursuant to Section 5.6.8, below.

5.6.6. Tenant shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 5.6 with capital improvement reserves (or replacement reserves) required by Tenant's Leasehold Mortgagees or the Limited Partner, as long as such capital improvement reserves or replacement reserves are in all material respects administered and utilized in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.6.

5.6.7. In the event of default by Tenant and the early termination of this Lease, the County shall have full access to the Capital Improvement Fund, provided the Tenant's Leasehold Mortgagee does not use it within a reasonable time for the purposes stated in this Section 5.6; provided, however, that County's rights under this Section 5.6.7 are hereby made subject and subordinate to the lien of each Leasehold Mortgage.

5.6.8. Commencing on the fifteenth (15th) day of the month during which the fifth (5th) anniversary of the Commencement Date occurs, and continuing on or before the fifteenth (15th) day of each month thereafter until five (5) years prior to the expiration of the Term, Tenant shall make an annual contribution to the Capital Improvement Fund in an amount equal to three-hundred dollars (\$300) per unit per year. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Tenant pursuant to this Section 5.6.

5.6.9. Disbursements shall be made from the Capital Improvement Fund only for costs which satisfy the requirements of this Section 5.6. For the purpose of obtaining the County's prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the County on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures ("**Capital Improvement Plan**"). County shall approve or disapprove such Capital Improvement Plan within thirty (30) days of receipt, which approval shall not be unreasonably withheld, conditioned or delayed. Any expenditure set forth in the approved Capital Improvement Plan shall be considered pre-approved by County (but only up to the amount of such expenditure set forth in the Capital Improvement Plan) for the duration of the upcoming year. Tenant shall have the right during the course of each year to submit to the County for the County's approval revisions to the then current Capital Improvement Plan, or individual expenditures not noted on the previously submitted Capital Improvement Plan. In the event of an unexpected emergency that necessitates a Permitted Capital Expenditure not contemplated by the Capital Improvement Plan, the Tenant may complete such work using the funds from the Capital Improvement Fund with contemporaneous or prior (if possible) written notice to the County and provide applicable documentation to the County thereafter for approval. If the County disapproves the emergency expenditure which was not previously approved by County, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the County of its decision.

5.6.10. Notwithstanding anything above to the contrary, if Tenant incurs expenditures that constitute Permitted Capital Expenditures but which are not funded out of the Capital Improvement Fund because sufficient funds are not then available in such fund, then Tenant may credit the Permitted Capital Expenditures so funded by Tenant out of its own funds against future Capital Improvement Fund contribution obligations of Tenant; provided, that such credit must

be applied, if at all, within four (4) years after such Permitted Capital Expenditure is incurred by the Tenant.

5.6.11 The parties agree that a replacement reserve fund held by Tenant's Leasehold Mortgagee, or by Tenant in satisfaction of any investor requirements, or both, will satisfy the Capital Improvement Fund requirements of this Section 5.6, so long as the Tenant otherwise complies with the requirements of this Section 5.6.

ARTICLE VI REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

6.1 Maintenance by Tenant. Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and any and all Improvements now or hereafter constructed and installed on the Premises in good order, condition and repair (*i.e.*, so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects. Tenant shall immediately notify the County of any damage relating to the Premises.

6.2 Interior Improvements, Additions and Reconstruction of Improvements. Following the completion of the Project, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the County's approved use of the Premises as reflected in this Lease, without County's prior written consent, but with prior written notice to the County (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify County of any emergency work done as soon as practicable). With prior written approval of County, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the County approved use of the Premises as reflected in this Lease. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, and in compliance with all applicable Laws in all material respects.

6.3 All Other Construction, Demolition, Alterations, Improvements and Reconstruction. Following the completion of the Project, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Chief Real Estate Officer, which consent shall not be unreasonably conditioned, delayed or withheld and may require the approval of the Board of Supervisors. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, and in compliance with all applicable Laws in all material respects.

6.4 Requirements of Governmental Agencies. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall: (i) make all alterations, improvements, demolitions, additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all

Laws now or hereafter made or issued respecting the Premises and/or the Improvements (subject to Tenant's right to contest such Laws in accordance with Section 4.4); (iv) indemnify, defend and hold County, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

6.5 County Obligations. Tenant specifically acknowledges and agrees that County, and County Parties do not and shall not have any obligations with respect to the maintenance, alteration, improvement, demolition, replacement, addition or repair of any Improvements.

6.6 County Reservations. Without limiting County's rights with respect to the Premises, County reserves for themselves, its successors and assigns those rights necessary to assure proper maintenance and operation of the Premises and to permit any steps to be taken which the County deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to County in this section or any other section of this Lease shall be exercised by the County at its sole discretion, unless otherwise provided herein.

ARTICLE VII DAMAGE AND RESTORATION

7.1 Damage and Restoration. In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is fully covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable Laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the Premises to accommodate such changed use after approval of such change of use by the County pursuant to Article IV above. This Article shall not apply to cosmetic damage or alterations. In the event that Tenant shall determine, subject to the rights of the Leasehold Mortgagees and Limited Partner, if applicable, by notice to the County given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may, with prior consent of all Leasehold Mortgagees, terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Leasehold Mortgagees refuse to consent to the termination of the Lease by Tenant, the Lease and all terms and condition shall remain in full force and effect and may be enforced without reservation by the County. Subject to the rights of Leasehold Mortgagees in Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the County immediately and assign to the County (or, if same has already been received by Tenant, pay to the County) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises, less (i) any costs, fees, or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds, (ii) any reasonable costs incurred by Tenant in connection with the Premises after the damage or destruction, which costs are eligible for reimbursement from such insurance proceeds, (iii) any amounts applied by Leasehold Mortgagees in accordance with the terms of their respective Leasehold Mortgages, and (iv) the proceeds of any

rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to the County.

7.2 Restoration. In the event of any restoration or reconstruction pursuant to this Section, all such work performed by Tenant shall be constructed in a good and workmanlike manner according to and in conformance with the Laws, rules and regulations of all governmental bodies and agencies and the requirements of this Lease applicable to the Work.

7.3 No Rental Abatement. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; except as otherwise provided herein.

7.4 Application of Insurance Proceeds. If following the occurrence of damage or destruction to the Premises or Improvements, Tenant is obligated to or determines that there are adequate proceeds to restore the Premises and Improvements pursuant to this Article VII, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the Improvements shall be applied to fully restore the same, and, subject to the rights of the Leasehold Mortgagees and Limited Partner, if applicable, any excess proceeds shall be paid to Tenant and any deficit in necessary funds plus the amount of any deductible shall be paid by Tenant. If Tenant after commencing or causing the commencement of the restoration of Premises and Improvements shall determine that the insurance proceeds are insufficient to pay all costs to fully restore the Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of Premises and the Improvements and pay the cost thereof. Upon lien free completion of the restoration, subject to the rights of the Leasehold Mortgagees, if applicable, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be paid to Tenant.

7.5 Exclusive Remedies. Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this Article VII. County and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that its rights shall be exclusively governed by the provisions of this Article VII.

7.6 Damage Near End of Term. If, during the last five (5) years of the Term, as applicable, the Improvements shall be damaged or destroyed for which the repair and/or replacement cost is fifty percent (50%) or more of then replacement cost of the Improvements, then Tenant shall have the option, to be exercised within ninety (90) days after such damage or destruction:

7.6.1. to notify the County of its election to repair or restore the Improvements as provided in this Article VII; or

7.6.2. subject to the rights of (and the consent of, if required) Leasehold Mortgagees and such provisions of this Lease that survive termination, to terminate this Lease by notice to the County, which termination shall be deemed to be effective as of the date of the damage or destruction. If Tenant terminates this Lease pursuant to this Section 7.6.2, Tenant shall surrender possession of the Leased Premises to the County immediately and assign to the County (or, if same

has already been received by Tenant, pay to the County) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises less (i) any costs, fees, or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds, (ii) any reasonable costs incurred by Tenant in connection with the Premises after the damage or destruction, which costs are eligible for reimbursement from such insurance proceeds, and (iii) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to the County.

ARTICLE VIII INSURANCE AND INDEMNITY

8.1 Tenant's Required Insurance.

8.1.1. Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy Chief Real Estate Officer that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with Chief Real Estate Officer during the entire term of this Lease.

8.1.2. Tenant agrees that it shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer; rent however shall not be suspended. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, Chief Real Estate Officer may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Lease.

8.1.3. If Tenant fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, County and Tenant agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to Tenant, said material breach shall permit Chief Real Estate Officer to take whatever steps are necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Tenant further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from Chief Real Estate Officer's action.

8.1.4. All contractors and subcontractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant and limits of insurance as described in Section 8.1.6 (e), Section 8.1.6 (f) and Section 8.1.6 (g). Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by County under this Lease. It is the obligation of the Tenant to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of

insurance must be maintained by Tenant through the entirety of this Lease and be available for inspection by Chief Real Estate Officer at any reasonable time.

8.1.5. All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Tenant's current audited financial report. If Tenant's SIR is approved, Tenant, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Tenant's, its agents, employee's or subcontractor's performance of this Lease, Tenant shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Tenant's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Tenant's SIR provision shall be interpreted as though the Tenant was an insurer and the County was the insured.

If the Tenant fails to maintain insurance acceptable to the County for the full term of this Lease, the County may terminate this Lease.

8.1.6. All policies of insurance required under this Article VIII must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer must be licensed to do business in the state of California.

(a) If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the carrier's performance and financial ratings.

(b) If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

(c.1) The policy or policies of insurance maintained by the **TENANT DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Builder's Risk (during the Construction Period) naming retained General Contractor	Project value and no coinsurance provision.
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate

Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence

(c.2) The policy or policies of insurance maintained by the **TENANT'S GENERAL CONTRACTOR DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$5,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Contractor's Pollution Liability including NODS	\$5,000,000 per claims made or per occurrence

(d) The policy or policies of insurance maintained by the **TENANT'S SUBCONTRACTORS DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employer's Liability Insurance (not required for self-employed subcontractors)	\$1,000,000 per occurrence

Contractor's Pollution Liability including NODS (Required only of those subcontractors involved in pollution remediation)	\$1,000,000 per claims made or per occurrence
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(e) The policy or policies of insurance maintained by the **ARCHITECT-ENGINEER** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Professional Liability (architect, structural, electrical engineer, mechanical/plumbing engineering, environmental engineer, civil engineer, landscape architect, and geotechnical engineer)	\$2,000,000 per occurrence \$2,000,000 aggregate
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence

(f) The policy or policies of insurance maintained by the **TENANT AFTER CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability Including Sexual Misconduct (defined as abuse, molestation and assault and battery)	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any tenant improvements	100% of the Replacement Cost Value and no coinsurance provision

including Business Interruption/Loss of Rents with a 12 month limit	
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Tenant shall provide a builder's risk policy, naming the Contractor, providing coverage for the full project value and no coinsurance provision. The policy shall provide coverage for all perils excluding earthquake, and flood. Tenant is responsible for any deductible amount. The County of Orange shall be named as a Loss Payee as its financial interests may appear. This shall be evidenced by a Loss Payee endorsement which shall accompany the Certificate of Insurance.

The Builder's Risk policy shall not be required to cover any tools, equipment, or supplies, unless such tools, equipment, or supplies are part of the Work being constructed. The Contractor shall be responsible for securing and maintaining appropriate insurance on any tools, equipment, or supplies that are not part of the work being constructed.

The County and the Contractor waive all rights against each other and the subcontractors, sub-subcontractors, officers, and employees of each other, and the Contractor waives all rights against County's separate contractors, if any, and its subcontractors, sub-subcontractors, officers and employees for damages caused by fire or other perils to the extent paid by the Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. The Contractor shall require of its subcontractors and sub-subcontractors by appropriate agreements, similar waivers, each in favor of all other parties enumerated in the preceding sentence.

(g) The policy or policies of insurance maintained by the **TENANT'S CONTRACTOR AFTER CONSTRUCTION** shall provide the minimum limits and coverage as set forth below when performing maintenance and minor work after the building is in operation:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence

8.1.7. **Required Coverage Forms.**

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

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

8.1.8. Required Endorsements. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, and its respective elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state, as required by Lease.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed.04/13) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85). (Pertains to contractors and subcontractors performing major construction). Contractors shall maintain Products and Completed Operations coverage for ten (10) years following completion of construction.

The Contractors Pollution Liability and Pollution Liability policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, and its respective elected and appointed officials, officers, employees, and agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by County shall be excess and non-contributing.

(a) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and its respective elected and appointed officials, officers, agents and employees.

(b) All insurance policies required by this Lease shall waive all rights of subrogation against the County of Orange, and its respective elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

(c) The Commercial Property Building policy shall include the County of Orange as a Named Insured. A Certificate of Insurance shall be submitted as evidence of this requirement. The Builders' Risk policy shall be endorsed to include the County of Orange as a Loss Payee. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

(d) Tenant shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to the County. Failure to provide written notice of cancellation may constitute a material breach of the Lease, after which the County may suspend or terminate this Lease.

(e) The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

(f) If Contractor's Pollution Liability and Pollution Liability are claims-made policies, Contractor shall agree to maintain coverage for five (5) years following completion of the construction. If Contractor's Professional Liability is a claims-made policy, Contractor shall agree to maintain coverage for ten (10) years following the completion of construction. Products and Completed Operations coverage shall be maintained for ten (10) years following the completion of construction.

(g) Insurance certificates should be forwarded to the County addresses provided in Section 18.19 below. Tenant has ten (10) business days to provide adequate evidence of insurance or it shall constitute an Event of Default.

(h) County expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease which shall be mutually agreed upon by County and Tenant.

(i) Chief Real Estate Officer shall notify Tenant in writing of changes in the insurance requirements consistent with subsection (h) above. If Tenant does not deposit copies of certificates of insurance and endorsements with Chief Real Estate Officer incorporating such changes within thirty (30) days of receipt of such notice, it shall constitute an Event of Default.

(j) The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

8.2 Indemnification. Tenant agrees to assume all risks, financial or otherwise, associated with the Premises. Tenant hereby releases and waives all claims and recourse against County, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease, including any damage to or interruption of use of the Premises including, but not limited to, loss of business, damage to, destruction of, or relocation costs of Tenant's Improvements or impaired utility of the Premises caused by erosion, flood, or flood overflow, or caused by any action undertaken in the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Premises except to the extent claims arise from the gross negligence or willful misconduct of County, its officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by County in County's reasonable discretion), and hold harmless, County, its elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except to the extent liability arises out of the gross negligence or willful misconduct of County, or any of its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom, and except for claims arising after the later to occur of the expiration or earlier termination of the Term, or the date Tenant vacates the Premises. If County is named as co-defendant in a lawsuit in connection with this Lease, Tenant shall notify County of such fact and shall represent the County in such legal action unless County undertakes to represent themselves as co-defendant in such legal action, in which event, Tenant shall be responsible to pay

County's litigation costs, expenses, and reasonable attorneys' fees. If judgment is entered against County and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and Tenant, County and Tenant agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. A judgment or other judicial determination regarding County's negligence shall not be a condition precedent to Tenant's obligations stated in this Section.

Tenant acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Tenant, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination. This Section 8.2 notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 4.4.4.

8.3 Damage to Tenant's Premises. County shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Tenant, of Tenant's employees, invitees, customers, or of any other person in or about the Premises or the Improvements caused by or resulting from any peril which may affect the Premises or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises or the Improvements, whether such damage or injury results from conditions arising upon the Premises or from other sources; provided, however, County shall be liable for injury or damage under this Section 8.3 resulting from County and/or its elected and appointed officials, officers, agents, employees or contractor's gross negligence or willful misconduct.

ARTICLE IX CONDEMNATION

9.1 Definitions.

9.1.1. "**Condemnation**" means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a Condemnor (hereinafter defined), and (ii) a voluntary sale or transfer to a Condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.

9.1.2. "**Date of Taking**" means the later of (i) the date actual physical possession is taken by the Condemnor; or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

9.1.3. **“Award”** means all compensation, sums or anything of value awarded, paid or received for a Total Taking, a Substantial Taking or a Partial Taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.

9.1.4. **“Condemnor”** means any public or quasi-public authority or private corporation or individual having the power of condemnation.

9.1.5. **“Total Taking”** means the taking by Condemnation of all of the Premises and all of the Improvements.

9.1.6. **“Substantial Taking”** means the taking by Condemnation of so much of the Premises or Improvements or both that one or more of the following conditions results, as reasonably determined by Tenant: (i) The remainder of the Premises would not be economically and feasibly usable by Tenant; and/or (ii) A reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) The conduct of Tenant’s business on the Premises would be materially and substantially prevented or impaired.

9.1.7. **“Partial Taking”** means any taking of the Premises or Improvements that is neither a Total Taking nor a Substantial Taking.

9.1.8. **“Notice of Intended Condemnation”** means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a Party hereto. The notice is considered to have been received when a Party receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

9.2 Notice and Representation.

9.2.1. **Notification.** The Party receiving a notice of one or more of the kinds specified below shall promptly notify the other Party (and the Limited Partner, if during the Compliance Period) of the receipt, contents and dates of such notice: (i) a Notice of Intended Condemnation; (ii) service of any legal process relating to the Condemnation of the Premises or Improvements; (iii) any notice in connection with any proceedings or negotiations with respect to such a Condemnation; (iv) any notice of an intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.

9.2.2. **Separate Representation.** County and Tenant each have the right to represent its respective interest in each Condemnation proceeding or negotiation and to make full proof of his claims. No agreement, settlement, sale or transfer to or with the Condemnor shall be made without the consent of County and Tenant. County and Tenant shall each execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to Condemnation.

9.3 Total or Substantial Taking.

9.3.1. **Total Taking.** On a Total Taking, this Lease shall terminate on the Date of Taking.

9.3.2. **Substantial Taking.** If a taking is a Substantial Taking, Tenant may, with the consent of each Leasehold Mortgagee and the Limited Partner, to the extent required, by notice to County given within ninety (90) days after Tenant receives a Notice of Intended Condemnation, elect to treat the taking as a Total Taking. If Tenant does not so notify County, the taking shall be deemed a Partial Taking.

9.3.3. **Early Delivery of Possession.** Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may in its sole discretion, with the consent of each Leasehold Mortgagee and the Limited Partner, to the extent required, elect to relinquish possession of the Premises to County before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.

9.3.4. **Apportionment of Award.** On a Total Taking all sums, including damages and interest, awarded for the fee or leasehold or both shall be distributed and disbursed as finally determined by the court with jurisdiction over the Condemnation proceedings in accordance with applicable law. Notwithstanding anything herein to the contrary, Tenant shall be entitled to receive compensation for the value of its leasehold estate under this Lease including its fee interest in all Improvements, personal property and trade fixtures located on the Premises, its relocation and removal expenses, its loss of business goodwill and any other items to which Tenant may be entitled under applicable law.

9.4 Partial Taking.

9.4.1. **Effect on Rent.** On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and Improvements, and Tenant shall not be entitled to any refund of the Base Rent.

9.4.2. **Restoration of Improvements.** Promptly after a Partial Taking, Tenant shall repair, alter, modify or reconstruct the Improvements ("**Restoring**") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased.

9.4.3. **Apportionment of Award.** On a Partial Taking, County shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

9.5 **Waiver of Termination Rights.** Both Parties waive their rights under Section 1265.130 of the California Code of Civil Procedure (and any successor provision) and agree that the right to

terminate this Lease in the event of Condemnation shall be governed by the provisions of this Article IX.

ARTICLE X ASSIGNMENT, SUBLETTING AND ENCUMBERING

10.1 **General.** Except as provided in Sections 10.3 and 17.6.4, below, Tenant shall not mortgage, pledge, hypothecate, encumber, transfer, sublease Tenant's interest in this Lease or assign (including an assignment by operation of law) Tenant's interest in the Premises or Improvements or any part or portion thereof (hereinafter referred to collectively as "**Transfer**") without the written consent of the County, which consent may not be unreasonably withheld, conditioned or delayed. County's consent may be subject to approval by its respective governing bodies (e.g. Board of Supervisors). Tenant's failure to obtain the County's written consent to a Transfer shall render such Transfer void. Occupancy of the Premises by a prospective transferee, sublessee, or assignee prior to County's written consent of a Transfer shall constitute an Event of Default, except as set forth in Section 10.3, below.

10.1.1. Except as provided in Section 10.3, below, if Tenant hereunder is a corporation, limited liability company, an unincorporated association or partnership, the sale or transfer of any stock or interest in said corporation, company, association and partnership in the aggregate exceeding 25% shall require the written consent of the County, as set forth in Section 10.3, above, which consent may not be unreasonably withheld, conditioned or delayed.

10.1.2. Should County consent to any Transfer, such consent and approval shall not constitute a waiver of any of the terms, conditions, covenants, restrictions or reservations of this Lease nor be construed as County's consent to any further Transfer. Such terms conditions, covenants, restrictions and reservations shall apply to each and every Transfer hereunder and shall be severally binding upon each and every party thereto. Any document to regarding the Transfer of the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

10.1.3. This Section shall not be interpreted to prohibit, disallow or require County's consent to space leases (subleases of less than Tenant's entire Lease interest), including leases of individual residential units in the Improvements, which are consistent with the approved uses under this Lease.

10.2 **Leasehold Mortgage.** Under no circumstances may Tenant mortgage, encumber or hypothecate County's Fee Interest, other than as required by TCAC pursuant to its lease rider, if any, and previously approved by County prior to the Effective Date of this Lease, in connection with the award of low income housing tax credits to Tenant.

10.3 **Excluded Transfers.** County's consent, as set forth in Section 10.1, above, shall not be required to for any Excluded Transfer (each party to whom an Excluded Transfer may be made is a "**Permitted Transferee**"), provided, however, that (1) Tenant shall notify County of such Excluded Transfer at least twenty (20) days prior to the consummation of such Excluded Transfer, and shall provide County with information regarding the transferee evidencing that the Transfer falls within the scope of this Section 10.3 and the definition of Excluded Transfer, set forth in Section 1.1.20, above, and (2) if such Transfer involves an assignment of Tenant's rights under this Lease,

Tenant or such transferee shall provide County with a written assumption of Tenant's obligations and liabilities under this Lease executed by such transferee in a form approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.3 shall not apply to any Transfer to a Foreclosure Transferee.

10.4 Transfer Procedure. The provisions of this Section 10.4 shall not be applicable to an Excluded Transfer, which shall be governed by Sections 1.1.20 and 10.3, above. If Tenant desires at any time to enter into a Transfer for which County's consent is required hereunder, Tenant shall provide County with written notice ("**Transfer Notice**") at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (*e.g.*, whether an assignment, sublease, etc.), (iii) the proposed effective date of the Transfer, (iv) income statements and "fair market" balance sheets of the proposed transferee for the two (2) most recently completed fiscal or calendar years (provided however, if the proposed transferee is a newly formed entity and has not been in existence for such two (2) year period, the financial statements submitted shall be those of its principals), (v) a detailed description of the proposed transferees qualifications and experience that demonstrates the transferee meets the criteria for a Tenant as established by this Lease, and (vi) a bank or other credit reference. Thereafter, Tenant shall furnish such supplemental information as County may reasonably request concerning the proposed transferee. County shall, no later than ninety (90) days after County's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether County give or withhold consent to the proposed Transfer, and (ii) if County withhold consent to the proposed Transfer, setting forth a detailed explanation of County's grounds for doing so. If County consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the County's approval and after execution of a consent to assignment by County in a form approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.4 shall not apply to any Transfer to a Foreclosure Transferee.

10.5 Liability of Transferors/Transferees For Lease Obligations. In the case of an assignment, including an assignment pursuant to Section 17.6.5, each Permitted Transferee and any other assignees or transferees of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Except as otherwise provided in Section 17.6.5, the transferor may be released from all liability under this Lease only if the Permitted Transferee or other transferee agrees in writing to assume all of transferor's obligations and liabilities and provides to County evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by County, which approval shall not be unreasonably withheld, that evidence said Permitted Transferee's or other transferees' financial and otherwise competence to assume transferor's obligations and liability (an "**Approved Release**"). Except as otherwise provided in Section 17.6.5 and except for an Approved Release, for all other Transfers, any transferor of any interest in this Lease or the Premises or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Except as otherwise provided in Section 17.6.5 and except for an Approved Release, the County may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee. Notwithstanding anything to the contrary contained herein, County consent shall not be required for any of the

following: (i) the exercise by the Limited Partner of its rights pursuant to Tenant's Partnership Agreement to remove the general partner of the Tenant and appoint the Limited Partner or an Affiliate thereof as interim general partner of the Tenant; (ii) the exercise by the Limited Partner of its right to enforce any repurchase requirements under Tenant's Partnership Agreement; and/or (iii) a transfer by the Limited Partner of its partnership interest in Tenant to an Affiliate of the Limited Partner.

10.6 Conditions of Certain County Consent.

10.6.1. County may withhold consent to a Transfer (excluding Excluded Transfers which shall not require County consent) at its and absolute sole discretion if any of the following conditions exist:

- (a) An Event of Default exists under this Lease.
- (b) The prospective transferee has not agreed in writing to keep, perform, and be bound by all the terms conditions, covenants, restrictions and reservations of this Lease.
- (c) In the case of an assignment, the prospective transferee has not agreed in writing to assume all of transferor's obligations and liabilities.
- (d) The Work has not been completed
- (e) Any construction required of Tenant as a condition of this Lease has not been completed.
- (f) All the material terms, covenants, and conditions of the Transfer that are relevant to the County's approval of the Transfer have not been disclosed in writing to the County.

10.6.2 The County agrees that it shall reasonably approve a Transfer of this Lease from Tenant to a transferee in connection with Phase II.

10.7 Transfer of Mortgages of County's Interest. Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, County shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with County or other governmental entities under applicable law) without the prior written consent of Tenant, Leasehold Mortgagee and the Limited Partner (provided, the Limited Partner's consent shall be required only during the tax credit compliance period). Any and all mortgages or liens placed or suffered by the County encumbering the County's fee interest in the Premises shall be expressly subject and subordinate to this Lease (and all amendments, modifications, extensions and renewals hereof), to all obligations of County hereunder, to all of the rights, titles, interests, and estates of the Tenant created or arising hereunder, to each New Lease and to each Leasehold Mortgage. Furthermore, any Person succeeding to the County's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the County hereunder.

ARTICLE XI DEFAULT AND REMEDIES

11.1 Event of Default. Each of the following events shall constitute an “**Event of Default**” by Tenant:

11.1.1. Failure to Pay. Tenant’s failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of fifteen (15) days after the date such Rent or other sum is due.

11.1.2. Failure to Perform. The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.1, 11.1.3, 11.1.6, or 11.1.8 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from County to Tenant or past any such longer period as reasonably agreed upon by the Tenant, County in writing as may be necessary for completion of its cure; provided, however, that any such notice by County shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et. seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than thirty (30) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) days, and thereafter diligently pursues such cure to completion.

11.1.3. Abandonment. The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant for a period of thirty (30) days or more.

11.1.4. Assignments.

(a) The making by Tenant of any assignment of its leasehold estate under this Lease without County’s consent, as set forth in Article X;

(b) A case is commenced by or against Tenant under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within ninety (90) days of such commencement;

(c) the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, where such seizure is not discharged within sixty (60) days; or

(d) Tenant’s convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of Tenant in and to the Premises shall become an asset in any of such proceedings.

11.1.5. Failure to Reimburse County. Tenant’s failure to reimburse the County pursuant to Section 3.6.4.

11.1.6. Termination of and Failure to Reinstate Insurance Coverage. Termination of Tenant’s insurance coverage and lack of reinstatement within ten (10) business days after notice from County of such termination.

11.1.7. Failure to Provide Evidence of Insurance. Tenant's failure to provide County with a valid and adequate certificate of insurance and endorsements, or binder, at any time during the Term of the Lease, within the time period required under Section 8.1.3.

11.1.8. County's Consent and Approval of Transfer. Occupancy of the Premises by a prospective transferee, sublessee, or assignee which requires County's consent or approval, before County's written consent and approval of a Transfer is obtained as required in Section 10.1.

11.1.9. Tenant's failure to make Additional Rent payment(s) as set forth in Sections 11.3 and 11.10.

11.2 County's Remedies. If an Event of Default occurs, County shall have the following remedies in addition to all rights and remedies provided by law or equity to which County may resort cumulatively or in the alternative:

11.2.1. Termination of Lease. Subject to Article 17, as applicable, County shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises. In the event that County shall elect to so terminate this Lease then County may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent and other charges, which had been earned as of the date of the termination hereof; plus

(b) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent and other charges for the balance of the Term hereof after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate County for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs; plus

(e) Subject to the rights of any Leasehold Mortgagees and TCAC, the funds in the Capital Improvement Fund; plus

(f) Any other amount which County may by law hereafter be permitted to recover from Tenant to compensate County for the detriment caused by Tenant's default as permitted under applicable California law.

The term "**Rent**" as used herein shall mean as defined in Section 1.1.41. Additional Rent shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such Additional Rent before such 24-month period has occurred, then it shall be computed on the basis of the average monthly amount during such shorter period. As used in Sections 11.2.1(a) and 11.2.1(b) above, the

"worth at the time of award" shall be computed by allowing interest at the Interest Rate. As used in Sections 11.2.1 (c) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Interest Rate.

11.2.2. Continue Lease in Effect. County may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of County's rights and remedies under this Lease, at law or in equity, including the right to recover the Rent as it becomes due under this Lease; provided, however, that County may at any time thereafter elect to terminate this Lease for the underlying Event(s) of Default by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.

11.2.3. Removal of Personal Property Following Termination of Lease. County shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, or disposed of without such storage, in accordance with applicable California law.

11.3 County's Right to Cure Tenant Defaults. If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, County may at its election, but is not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be Additional Rent payable by Tenant on County's demand. Tenant's failure to reimburse the County within 30 days of County's demand shall constitute an Event of Default under this Lease. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.

11.4 County's Default. County shall not be considered to be in default under this Lease unless Tenant has given County written notice specifying the default, and either (i) as to monetary defaults, County have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, County have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of County's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) day period shall be extended automatically so long as County commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by County under this Lease against any amounts owing by Tenant under this Lease. Additionally, Tenant's sole remedy for any monetary default shall be towards the County's interest in the property and not to any other assets. Any and all claims or actions accruing hereunder shall be absolutely barred unless such action is commenced within six (6) months of the event or action giving rise to the default.

11.5 Remedies Cumulative. All rights and remedies of County contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and County shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

11.6 Waiver by County. No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by Tenant hereunder. The acceptance by County of Rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by Tenant of any provision thereof, other than the failure of Tenant to pay the particular rent or sum accepted, regardless of County's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of County's right to exercise any remedy available to County by virtue of such breach or default. No act or thing done by County agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by County.

11.7 Interest. Any installment or Rent due under this Lease or any other sums not paid to County when due (other than interest) shall bear interest at the Interest Rate from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

11.8 Conditions Deemed Reasonable. Tenant acknowledges that each of the conditions to a Transfer, and the rights of County set forth in this Article X in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

11.9 Waiver by Tenant. Tenant's waiver of any breach by County of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

11.10 Tenant Covenants and Agreements. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expenses and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant within the time period required under this Lease, then in addition to any other remedies provided herein, County may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by County on Tenant's behalf shall not give rise to any responsibility of County to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by County in connection therewith, together with interest at the Interest Rate from the date incurred or paid by County, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant within thirty (30) days of receipt of a demand and invoice from County, and Tenant's failure to pay the County, as stated herein, shall constitute an Event of Default under this Lease.

ARTICLE XII HOLDING OVER

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of County, Tenant shall become a Tenant at sufferance only, at a monthly rental rate of (a) Fifty Thousand Dollars (\$50,000) to the extent the Premises are not subject to any tenant income or rent restrictions and all units may be rented at market-rate rents, or (b) Twenty Five Thousand Dollars (\$25,000) to the extent the Premises are subject to any tenant income or rent restrictions ("**Hold Over Rent**"), increased annually commencing with commencement of the hold

over period by an amount equal to the greater of (i) three percent (3%) for each year of the Term, or (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index (“CPI”) for Los Angeles- Riverside-Orange County [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)]. Said CPI for the month of December for the second year of the Term shall be considered the “Base Period.” Said adjustment shall be made by comparing the CPI for the Base Period to the CPI for the month of December immediately preceding each such adjustment. If at any time there shall not exist the CPI, County shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. If Tenant fails to surrender the Premises and the Improvements as stated herein, and County shall take legal action to cause Tenant’s eviction from the Premises and is successful in such action, Tenant shall be responsible for all costs and expenses, including reasonable attorney’s fees and costs, incurred by County in connection with such eviction action; Tenant shall also indemnify and hold County harmless from all loss or liability or reasonable attorney’s fees and costs, including any claim made by any succeeding tenant, incurred by County founded on or resulting from such failure to surrender.

ARTICLE XIII ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either County or Tenant (the “**requesting party**”), the other Party (the “**responding party**”) shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either County or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender) and any such certificate may be relied upon by the Parties.

ARTICLE XIV FORCE MAJEURE

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either Party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of County, Tenant, or their respective agents or representatives (collectively, “**Force Majeure Events**”). In no event, however, shall Force Majeure Events include the financial inability of a Party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant’s obligation to pay Rent owing hereunder).

ARTICLE XV
RECORDS AND ACCOUNTS

15.1 Financial Statements. Within one hundred eighty (180) after the end of each accounting year, Tenant shall at his own expense submit to Auditor-Controller a balance sheet and income statement prepared by a Certified Public Accountant (“CPA”) who is a member of the American Institute of Certified Public Accountants (“AICPA”) and the California Society of CPAs, reflecting business transacted on or from the Premises during the preceding accounting year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant's records as reported to the United States of America for income tax purposes. At the same time, Tenant shall submit to Auditor-Controller a statement certified as to accuracy by a Public Accountant who is a member of AICPA and the California Society of CPAs, wherein the total Gross Receipts for the accounting year are classified according to the categories of business established for percentage rent and listed in Section 3.4.1(d) and for any other business conducted on or from the Premises. Tenant shall provide County with copies of any CPA's management letters prepared in conjunction with their audits of Tenant's operations from the Premises. Copies of management letters shall be provided directly to County by the CPA at the same time Tenant's copy is provided to Tenant. In the event that when such financial statements are submitted, the Tenant has a budget for the following accounting year, Tenant, at the same time, shall also provide County with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the County pursuant to this Lease become Public Records and may be subject to public inspection and copying pursuant to §§ 6250 *et. seq.* of the California Government Code.

15.1.2. All Tenant's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Premises shall be kept and made available at one location within the limits of the County unless an alternative location is approved in writing by the County. County shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof in connection with such Sections of this Lease as the Parties mutually and reasonably agree the audit is relevant thereto.

15.2 Reports. In the event that the Tenant commissions, requests or is required to produce any reports related to the physical condition of the Improvements or Premises, Tenant shall submit copies of such reports to County along with the financial statements required above in Section 15.1.

ARTICLE XVI
OPERATIONAL OBLIGATIONS OF TENANT

16.1 Standards of Operation.

16.1.1. Tenant shall operate the Premises in a manner reasonably comparable to other comparable facilities or businesses within the County of Orange. Tenant shall at all times during the Term provide adequate security measures to reasonably protect persons and property on the Premises.

16.1.2. The ultimate purpose of this Lease is to permit the construction and operation of a multifamily affordable residential rental development, including permanent supportive housing, in accordance with Section 4.1.1. Accordingly, Tenant covenants and agrees to operate said Premises fully and continuously to accomplish said purposes and not to abandon or vacate the Premises at any time.

16.1.3. The facilities on the Premises shall be operated during normal business hours, subject to any temporary interruptions in operations or closures due to ordinary maintenance and repair and any Force Majeure Event, defined in Article XIV above.

16.2 Protection of Environment. Tenant shall take all reasonable measures available to:

16.2.1. Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Tenant's facilities.

16.2.2. Maintain a reasonable noise level on the Premises so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

16.2.3. Prevent the light fixtures of the Premises from emitting light that could negatively affect the operation of cars, boats, or airplanes in the area.

16.2.4. Prevent all pollutants from Tenant's operations on the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits or as permitted by applicable Law. Tenant and all of Tenant's agents, employees and contractors shall conduct operations under this Lease so as to ensure that pollutants do not enter the municipal storm drain system (including but not limited to curbs and gutters that are part of the street systems), or directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean), except as may be permitted by any applicable permits or as permitted by applicable law.

16.2.5. The County may enter the Premises in accordance with Section 4.5 and/or review Tenant records at all reasonable times to assure that activities conducted on the Premises comply with the requirements of this Section.

16.3 On-Site Manager. Tenant shall employ a competent manager who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order for the Premises. Such person shall be vested with the authority of Tenant with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Tenant's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Tenant shall notify County in writing of the name of the Manager currently so employed as provided in Section 19.20 of this Lease.

16.4 Policies and Procedures to be Established by Tenant. Prior to the completion of construction, Tenant shall submit to County proposed policies and procedures pertinent to the operation of the multifamily affordable residential rental development and manner of providing the uses required by this Lease ("Policies and Procedures").

ARTICLE XVII
LEASEHOLD MORTGAGES

17.1 **Definitions.** The following definitions are used in this Article (and in other Sections of this Lease):

17.1.1. “**Leasehold Estate**” shall mean Tenant’s leasehold estate in and to the Premises, including Tenant’s rights, title and interest in and to the Premises and the Improvements, or any applicable portion thereof or interest therein.

17.1.2. “**Leasehold Foreclosure Transferee**” shall mean any person (which may, but need not be, a Leasehold Mortgagee) which acquires the Leasehold Estate pursuant to a foreclosure, assignment in lieu of foreclosure or other enforcement of remedies under or in connection with a Leasehold Mortgage.

17.1.3. “**Leasehold Mortgage**” shall mean and includes a mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by a Lender by which Tenant’s Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation.

17.1.4. “**Leasehold Mortgagee**” shall mean a Lender which is the holder of a Leasehold Mortgage.

17.1.5. “**Tenant**” shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to County; and (iii) any further assignee, transferee or subtenant of any of the parties listed in (ii) who is or becomes directly and primarily liable to County.

17.2 **Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber County’s Fee Interest.** Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of County after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant’s Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

17.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (a) if recorded before completion of the Work, One Hundred Percent (100%) of the costs of the Work, or (b) if recorded after completion of the Work, eighty percent (80%) of the Leasehold Estate value (including the value of all improvements) after completion;

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, County’s Fee Interest;

17.2.3. Except as expressly provided in this Lease, the Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of County hereunder; and

17.2.4. Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the County's Fee Interest to any Leasehold Mortgage, and;

17.2.5. Except as otherwise expressly provided herein, in the event of any conflict between the provisions of this Lease and the provisions of any such Leasehold Mortgage, the provisions of this Lease shall control.

Tenant's encumbrance of its Leasehold Estate with a Leasehold Mortgage, as provided in this Section 17.2, shall not constitute an assignment or other Transfer under Article X or otherwise, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the Tenant's obligations and liabilities under this Lease.

Notwithstanding the foregoing, if any Leasehold Mortgagee (or its nominee) acquires title to the Premises by foreclosure or deed in lieu thereof, any required consent of the County under this Section 17.2 shall not be unreasonably withheld.

17.3 Notification to County of Leasehold Mortgage. Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide County with written notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, Tenant or such Leasehold Mortgagee shall furnish to County a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, Tenant or any Leasehold Mortgagee shall notify County of any change in the identity or address of such Leasehold Mortgagee. County shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

17.4 Notice and Cure Rights of Leasehold Mortgagees and Limited Partner With Respect to Tenant Defaults. County, upon delivery to Tenant of any notice of a default or demand for payment by Tenant under this Lease or a matter as to which County may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee and to the Limited Partner. Each notice or demand required to be given by County to a Leasehold Mortgagee and the Limited Partner under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee and the Limited Partner at the address(es) provided by such Leasehold Mortgagee and the Limited Partner, as applicable, to County from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by County to Tenant shall be effective until the duplicate copy of such notice or demand to the Tenant shall have been effectively given to each Leasehold Mortgagee and to the Limited Partner in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee and to the Limited Partner, such Leasehold Mortgagee and the Limited Partner shall have the same cure period for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease or as otherwise agreed upon by County and the Tenant, to commence and/or complete a cure of such default (or act or omission which is the subject matter of such notice). County shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s) and/or by the Limited Partner, including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee and the Limited Partner to take any such action at such Leasehold Mortgagee's or Limited Partner's (as applicable) option, and hereby authorizes any Leasehold

Mortgagee and Limited Partner (or any receiver or agent) to enter upon the Premises for such purpose.

17.5 Limitation on County's Termination Right. If following the delivery of notice pursuant to Section 17.4, above, the default by Tenant continues and is not cured by Tenant (or any Leasehold Mortgagee or the Limited Partner as allowed under Section 17.4, above), and such failure entitles County to terminate this Lease, County shall have no right to terminate this Lease unless County shall notify in writing each and every Leasehold Mortgagee and the Limited Partner who has complied with Section 17.3 of County's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee or the Limited Partner, within such sixty (60) day period, (i) notifies County of such Leasehold Mortgagee's or Limited Partner's desire to cure such default and initiates such cure and (ii) pays or cause to be paid the amount that is necessary to cure any monetary default as stated in such notice, if any, then Section 17.6 shall apply. The County, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee and/or Limited Partner to commence the cure or make payment(s), as stated herein. If any Leasehold Mortgagee and Limited Partner fails to respond to said notice of termination within the allotted sixty (60) days as consistent with the conditions of this Section 17.5, County are entitled to immediately terminate this Lease.

17.6 Leasehold Mortgagee Foreclosure Period. If any Leasehold Mortgagee complies with Section 17.5 above, then the following provisions shall apply:

17.6.1. If County's notice under Section 17.5 specifies only monetary Events of Default as the basis for County's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by County in its notice, then such payment shall be deemed to have cured the Event of Default. If County's notice under Section 17.5 specifies both monetary and non-monetary Events of Default or non-monetary Events of Default as the basis for County's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by County in its notice, as applicable, then the date of termination specified in County's notice shall be extended for a period of twelve (12) months, provided that such Leasehold Mortgagee shall, during such twelve (12) month period:

(a) pay or cause to be paid all Rent under this Lease as the same becomes due (subject to the notice and cure rights expressly set forth herein); and

(b) continue (subject to any stay as described in Section 17.6.2 below) its good faith efforts to perform (and complete performance of) all of Tenant's nonmonetary obligations under this Lease that are capable of being performed by the Leasehold Mortgagee without having possession of the Premises, excepting nonmonetary obligations (whether or not a default exists with respect thereto) that are not then reasonably susceptible of being cured by Leasehold Mortgagee; and

(c) commence and pursue with reasonable diligence until completion (subject to any stay as described in Section 17.6.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgage.

17.6.2. In the event of a judicial or non-judicial foreclosure, the twelve (12) month period described in Section 17.6.1, above, shall automatically be extended by the length of any delay caused by any stay (including any automatic stay arising from any bankruptcy or insolvency proceeding involving Tenant), injunction or other order arising under applicable Laws or issued by

any court (which term as used herein includes any other governmental or quasi-governmental authority having such power) (the foregoing being collectively referred to as a “Stay”). Further, Leasehold Mortgagee’s obligations stated in Section 17.6.1(b) and (c) shall be automatically suspended during any period that any Stay prevents Leasehold Mortgagee from taking any such actions. Nothing herein, however, shall be construed to extend this Lease beyond the Term hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default has been cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

17.6.3. In the event the Leasehold Mortgage requires a new lease between the County and the Leasehold Mortgagee, County shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided County are provided with the necessary and adequate documents related to the new lease requirements in the Leasehold Mortgage as described in Section 17.7.

17.6.4. So long as any Leasehold Mortgagee is complying with Sections 17.6.1 and 17.6.2 above, then upon the acquisition of Tenant’s Leasehold Estate by a Leasehold Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided that no Leasehold Foreclosure Transferee shall have any liability for the performance of any of the Tenant’s obligations under this Lease until the Leasehold Foreclosure Transferee has acquired the Tenant’s interest under the Lease, and then the Leasehold Foreclosure Transferee shall be liable for the performance of only those obligations of the Tenant arising from and after the effective date of the Leasehold Foreclosure Transferee’s acquisition of the Tenant’s Leasehold Estate. Any such Leasehold Foreclosure Transferee shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the effective date on which such Leasehold Foreclosure Transferee acquires title to the Leasehold Estate, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

17.6.5. Any Leasehold Mortgagee (or its designee) that becomes a Leasehold Foreclosure Transferee, upon acquiring title to Tenant’s Leasehold Estate without obtaining County’s consent and provided it is not in default of any of the provisions of this Lease, shall have a one-time right to assign the Leasehold Estate to an assignee (a) which is an Affiliate of the Leasehold Foreclosure Transferee, or (b) which has substantial experience, or will employ a property management company with substantial experience, managing, maintaining and operating affordable housing developments like that on the Premises. Upon such assignment, the Leasehold Foreclosure Transferee shall automatically be released of all obligations thereafter accruing under this Lease, provided that, substantially concurrently with such assignment, the assignee delivers to County a written agreement assuming Tenant’s obligations under the Lease thereafter accruing. Any subsequent Transfers occurring after the one-time assignment permitted under this Section shall be subject to Article X.

17.7 Leasehold Mortgagee’s Right to New Lease.

17.7.1. In the event of any termination of this Lease (including any termination because of an Event of Default, or because of any rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor’s rights, but other than by reason of a Total Taking), County shall give prompt written notice of such termination to each Leasehold Mortgagee

and shall (subject to Section 17.8 below if more than one Leasehold Mortgagee then exists) enter into a new lease (“**New Lease**”) of the Premises with the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority, in accordance with Section 17.8 below, or its designee, upon notice to County by such Leasehold Mortgagee. The New Lease shall commence as of its effective date and shall continue for the remainder of the scheduled Term of this Lease, at the same Rent that is payable under this Lease, and on the same terms, conditions, covenants, restrictions and reservations that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any tenants under residential subleases or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees; provided that, substantially concurrently with the delivery of a notice by Leasehold Mortgagee requiring County to enter into a New Lease, Leasehold Mortgagee shall pay to County all Rent or any other amounts payable by Tenant hereunder which are then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

17.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 17.7.1 above, then County and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease; but until such written New Lease is mutually executed and delivered, this Lease shall govern, from and after the giving of notice pursuant to Section 17.7.1 but prior to the execution of the New Lease, the County’s and Leasehold Mortgagee’s relationship with respect to the Premises and the Improvements and the Leasehold Mortgagee shall (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to County any Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under this Lease. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to County its reasonable expenses, including reasonable attorneys’ fees and costs, incurred in connection with the preparation, execution and delivery of such written New Lease. In addition, upon execution of any such New Lease, County shall execute, acknowledge and deliver to such Leasehold Mortgagee (or its designee) a grant deed, in recordable form, conveying to such Leasehold Mortgagee (or its designee) fee title to all Improvements in the event that title to such Improvements have vested with the County.

17.7.3. In the event that County receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that County may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by County except to the extent that it was applied to cure any default of Tenant.

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and claims of the tenant under the New Lease.

17.8 Multiple Leasehold Mortgages. If more than one Leasehold Mortgagee shall make a written request upon County for a New Lease in accordance with the provisions of Section 17.7, then such New Lease shall be entered into pursuant to the request of the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority.

Notwithstanding anything herein to the contrary, County shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting

demands made upon County by multiple Leasehold Mortgagees, County may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

17.9 Condemnation and Insurance Proceeds. Notwithstanding anything to the contrary contained herein, all condemnation proceeds (other than proceeds payable on account of the value of the County's Fee Interest as encumbered by this Lease) or insurance proceeds shall be subject to and paid in accordance with the requirements of the most senior (in order of lien priority) Leasehold Mortgage, subject, however, to any requirement in this Lease that, to the extent not in conflict with the terms of the applicable Leasehold Mortgage, such proceeds must be used to repair and restore the Improvements to the Premises which were damaged or destroyed by such condemnation or casualty (including, without limitation, as required in Article VII following a casualty and in Section 9.4.3 following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of such senior Leasehold Mortgage.

17.10 Mortgage Clauses. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder, provided that any such Leasehold Mortgagee shall hold and apply such insurance proceeds subject to the provisions of this Lease.

17.11 No Waiver. No payment made to County by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to County pursuant to County's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

17.12 Fees and Costs. Tenant agrees to reimburse County for its reasonable attorneys' fees and costs incurred in connection with County's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

17.13 No Termination, Cancellation, Surrender or Modification. Without the prior written consent of each Leasehold Mortgagee, (a) this Lease may not be terminated or cancelled by mutual agreement of County and Tenant, (b) County may not accept the surrender this Lease or the Leasehold Estate created hereunder without the consent of each Leasehold Mortgagee, and (c) this Lease may not be amended, modified or supplemented (and any action taken in furtherance of any of the foregoing without the required consent of each Leasehold Mortgagee shall be void and of no effect). In addition, if any term or provision of this Lease gives Tenant the right to terminate or cancel this Lease, in whole or in part, no such termination or cancellation shall be or become effective unless Tenant has first received approval in writing by each Leasehold Mortgagee.

17.14 Effect of Foreclosure upon Base Rent. Notwithstanding anything to the contrary contained elsewhere in this Lease, (i) in no event shall any Leasehold Mortgagee (or its designee) be required to pay or cure, in order to prevent the termination of this Lease, to exercise its cure rights hereunder or to obtain a New Lease or otherwise, any Base Rent, and (ii) in no event shall any Leasehold Mortgagee (or its designee) or its (or their) successors and assigns be required to pay or cure any Base Rent which otherwise became due and payable prior to completion of any foreclosure under any Leasehold Mortgage (or acceptance of any assignment or deed in lieu thereof).

ARTICLE XVIII BEST MANAGEMENT PRACTICES

18.1 Tenant and all of Tenant's, subtenant, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems, in violation of applicable Laws, which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

18.2 The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County of Orange, and to the Orange County Flood Control District ("**District**") and cities within Orange County, as co-permittees (hereinafter collectively referred to as "**NPDES Parties**") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises leased under this Lease. The NPDES Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

18.3 To assure compliance with the Stormwater Permits and water quality ordinances, the NPDES Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction that contains Best Management Practices ("**BMPs**") that parties using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the District and/or County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

18.4 BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit C**. These BMP Fact Sheets may be modified during the term of the Lease; and the County shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. Tenant agrees to maintain current copies of the BMP Fact Sheets on the Premises throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

18.5 Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the County for review and approval prior to implementation.

18.6 County may enter the Premises and/or review Tenant's records at any reasonable time during normal business hours to ensure that activities conducted on the Premises comply with the requirements of this Section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this Section.

ARTICLE XIX

GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

19.1 **Signs.** Tenant agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except (a) as approved in writing in advance by County, which approval may be withheld in the sole and absolute discretion of the County, or (b) required by any of Tenant's lenders, provided that any such signage is in compliance with all applicable Laws. Tenant further agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises. Unapproved signs, banners, flags, etc., may be removed by County without prior notice to Tenant.

19.2 **Nondiscrimination.** Tenant agrees not to discriminate against any person or class of persons by reason of sex, age (except as permitted by law), race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

19.3 **Taxes and Assessments.** Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

19.4 **Quitclaim of Interest upon Termination.** Upon termination of this Lease for any reason whatsoever in accordance with the terms of the Lease, Tenant shall execute, acknowledge, and deliver to County, within five (5) business days, a good and sufficient deed, in a form as approved by the County, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to County ("**Quitclaim Deed**"). The Quitclaim Deed shall then be recorded by County to remove any cloud on title created by this Lease. In the event that the Tenant fails to provide such Quitclaim Deed within five (5) additional business days after written demand by the County, the Parties agree that the County will be damaged and entitled to compensation for those damages. Such actual damages will, however, be extremely difficult to ascertain. Therefore, if the Tenant does not provide the required Quitclaim Deed after such notice and cure period, in addition to any other remedy provided by law or equity, the Tenant shall pay the County \$2,000 per day for every day that passes until a Quitclaim Deed is delivered, which amount shall be deemed to constitute a reasonable estimate of County's damages and not a penalty. Such amount shall become due and payable by Tenant to County for each calendar day that passes beyond the cure period. Notwithstanding the foregoing, if the Tenant has disputed the termination of the Lease by County, upon a final determination by a court of competent jurisdiction that the Lease has not been terminated, Tenant shall not be subject to payment of the foregoing damages.

19.5 **Public Records.** Tenant acknowledges that any written information submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, is a "public record" open to inspection and copying by the public pursuant to the California Public Records Act (Government

Code §6250, *et seq.*) (“CPRA”) as now in force or hereafter amended, or any Law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of CPRA. In the event that a CPRA request is made for any financial statements and records (not including Gross Receipts Statements) and the County determines that the records must be turned over, the County will give Tenant fifteen (15) days’ written notice prior to turning over such records so that Tenant can take any necessary action, including, but not limited to, injunctive relief, to prevent County from turning over such financial statements and records.

19.6 Attorney’s Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys’ fees and costs.

19.7 Payment Card Compliance. Should Tenant conduct credit/debit card transactions in conjunction with Tenant’s business with the County, on behalf of the County, or as part of the business that Tenant conducts on the Premises, Tenant covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard (“PCI/DSS”) and Payment Application Data Security Standard (“PA/DSS”) compliant and will remain compliant during the entire duration of its conduct of such activities. Tenant agrees to immediately notify County in the event Tenant should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption. Upon demand by County, Tenant shall provide to County written certification of Tenant’s PCI/DSS and/or PA/DSS compliance.

19.8 Right to Work and Minimum Wage Laws.

19.8.1. In accordance with the United States Immigration Reform and Control Act of 1986, Tenant shall require its employees that directly or indirectly service the Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Tenant shall also require and verify that its contractors or any other persons servicing the Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

19.8.2. Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, Tenant shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Premises, in any manner whatsoever. Tenant shall require and verify that all its contractors or other persons servicing the Premises on behalf of the Tenant also pay their employees no less than the greater of the Federal or California Minimum Wage.

19.8.3. Tenant shall comply and verify that its general contractor complies with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Premises or terms and conditions of this Lease.

19.9 Declaration of Knowledge by Tenant. Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the

construction of the Lease improvements and business practices required in the operation and management of the uses contemplated hereunder.

19.10 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California and the City. Tenant understands and agrees that funding for this project has been provided pursuant to the State of California under the Homekey Program and that Tenant must comply with the California Department of Housing and Community Development's Notice of Funding Availability for this program and Assembly Bill No. 140 (2021-2022 Reg. Sess.) which created the statutory basis for the Homekey Program.

19.11 Venue. The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, 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. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

19.12 Headings and Titles. The captions of the Articles or Sections of this Lease are only to assist the Parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

19.13 Interpretation. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "**Tenant**" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "**County**" shall include County's agents, employees, contractors, invitees, successors or others using the Premises with County's expressed or implied permission.

19.14 Ambiguities. Each Party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular Party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

19.15 Successors and Assigns. Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

19.16 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

19.17 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

19.18 Integration. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein and related permits, constitute the entire agreement between County, and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by County and Tenant. County and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

19.19 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or electronic mail, shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if given by electronic mail, when sent if before 5:00 p.m., otherwise on the next business day, or (d) if delivered by overnight delivery, one (1) business day after mailing. Any notice, request, demand, direction or other communication sent by electronic mail must be confirmed within by letter mailed or delivered within two business days in accordance with the foregoing.

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

If to County: County of Orange
c/o CEO Real Estate
400 W. Civic Center Dr., 5th Floor
Santa Ana, CA 92701
Attn: Chief Real Estate Officer

With a copy to: Office of County Counsel
Hall of Administration
400 W. Civic Center Dr., 2nd Floor
Santa Ana, California 92701
Attn: Michael Haubert, Senior Deputy
Fax: (714) 834-2359

If to Tenant: CM Mercy House CHDO LLC
c/o _____
Attention: _____
P.O. Box 1905
Santa Ana, CA 92702

Attention: _____
Email: _____

And to:

With a copy to: _____
Attention: _____

Email: _____

And to:

With a copy to:

Attention: _____

Email: _____

And to:

19.20 Amendments. This Lease is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by all Parties.

19.21 Limited Partner Cure Rights. In the event the Tenant is a partnership, the County agrees to accept a cure of any Event of Default by Tenant made by any one or more of the Tenant's limited partners as if such cure had been made by Tenant, provided such cure is made in accordance with the applicable provisions of this Lease.

19.22 Dispositions of Abandoned Property. If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises thirty (30) days after such event shall, at County's option, be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property at Tenant's cost, including the cost of labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of such costs without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor. At County's option, County may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

19.23 Brokers. If Tenant has engaged a broker in this transaction pursuant to a separate agreement, Tenant shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Tenant each hereby agree to indemnify and hold the County harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by the County in connection with any claim or demand by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Tenant's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Tenant. No broker, finder or other agent of any Party hereto shall be a third-party beneficiary of this Lease

19.24 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Tenant. County and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County and Tenant, and that County is not responsible in any way for the debts of Tenant or any other Party.

19.25 Authorization. County and Tenant (each, a "signing party") each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has

full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, the Tenant shall deliver to the County a certified copy of a resolution of the signing party's board of directors or other governing board authorizing the execution of this Lease by the signing party.

19.26 Recording. This Lease itself, and the Regulatory Agreement, shall not be recorded, but in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit D** attached hereto (the "**Memorandum**"). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.27 Exhibits. This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

- Exhibit A: Legal Description of the Premises
- Exhibit A-1: Rendering of the Premises
- Exhibit B: Project Description and Work to be Completed
- Exhibit C: Best Management Practices Fact Sheets
- Exhibit D: Form of Memorandum of Lease
- Exhibit E: Bill of Sale for Improvements as of Effective Date

19.28 Consent/Duty to Act Reasonably. Except as otherwise expressly provided herein, whenever this Lease grants County and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County and/or Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other Party's reasonable expectations concerning the benefits to be enjoyed under this Lease.

19.29 Counterparts. For the convenience of the Parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

19.30. No Merger. The interests created by this Lease shall not be extinguished by merger of any or all of the ownership interests the Premises or the Improvements in one person or entity.

19.31 Cooperation of County. County hereby agrees to work cooperatively and expeditiously to provide written consent (or written refusal to provide consent) to Tenant, the Leasehold Mortgagees and Limited Partner hereunder.

[Signatures On Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Lease on the date first written above.

	<p><u>TENANT</u></p> <p>CM Mercy House CHDO LLC</p> <p>By:</p> <p>By: _____ Name: _____ Title: _____</p> <p>By:</p> <p>By: _____ Name: _____ Title: _____</p>
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<p>APPROVED AS TO FORM: COUNTY COUNSEL</p> <p>By: <u>Michael A. Heubert</u> <small>Digitally signed by Michael A. Heubert DN: cn=Michael A. Heubert, o=County of Orange, ou=County Counsel, email=Michael.Heubert@coor.gov, c=US Date: 2022.10.12 13:57:14 -0700'</small></p> <p style="margin-left: 40px;">Deputy</p> <p>Date <u>October 12, 2022</u></p>	<p><u>COUNTY</u></p> <p>COUNTY OF ORANGE, a political subdivision of the State of California</p> <p>_____ Thomas A. Miller, Chief Real Estate Officer Orange County, California</p>
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**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF COSTA MESA IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 28, 29 AND 30 OF TRACT NO. 114, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 14 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS PER LOT LINE ADJUSTMENT LL-90-02 RECORDED APRIL 12, 1990 AS INSTRUMENT NO. 90-192418 OF OFFICIAL RECORDS.

APN: 426-053-15

(End of Legal Description)

EXHIBIT A-1
RENDERING OF THE PROPERTY

EXHIBIT B
PROJECT DESCRIPTION AND WORK TO BE PERFORMED

The Premises are developed with an existing two-story hotel (Motel 6) building with 94 units (currently 79 units are permitted, however Tenant and City Building officials have agreed to get the additional units up to current code and in compliance with applicable laws prior to issuance of permits for Phase II work) with approximately 36,434 sf. The Project includes the redevelopment of the Motel 6 to include immediate necessary repairs and convert it into permanent supportive housing.

The Project will have 40 units affordable to households earning no more than 30 percent of Area Median Income (AMI) for Orange County of which, following the subsequent comprehensive rehabilitation, all 40 units will be set-aside for Permanent Supportive Housing (PSH). The unit mix and rent restrictions are as follows, provided, however, the rent and income restrictions applicable to the Project shall be set forth in and subject to the terms of the Loan Agreement and Regulatory Agreement:

Phase I

Bedroom Size	30% AMI (PSH)	30% AMI	Manager's Unit	Total Units
Studios	40			40
One-Bedroom				
Two-Bedroom				
Three-Bedroom				
Four-Bedroom				
TOTAL	40			40

Phase II

Bedroom Size	% AMI (PSH)	% AMI	Manager's Unit	Total Units
Studios				
One-Bedroom				
Two-Bedroom				
Three-Bedroom				
Four-Bedroom				
TOTAL				

EXHIBIT C
Best Management Practices
(“BMPs” Fact Sheets)

Best Management Practices can be found at: <http://www.ocwatersheds.com/documents/bmp> which website may change from time to time.

BMPs apply to the TENANT's defined Premises and BMPs also apply to the TENANT's Contractor therefore TENANT shall cause Contractor to be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to construction activity with respect to the Improvements, and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises. TENANT is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease. Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:

<http://www.ocwatersheds.com/documents/bmp/industrialcommercialbusinessesactivities> (which website may change from time to time):

IC3 Building Maintenance

IC4 Carpet Cleaning

IC6 Contaminated or Erodible Surface Areas

IC7 Landscape Maintenance

IC9 Outdoor Drainage from Indoor Areas

IC10 Outdoor Loading/Unloading of Materials

IC12 Outdoor Storage of Raw Materials, Products, and Containers

IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment

IC15 Parking & Storage Area Maintenance

IC17 Spill Prevention and Cleanup

IC21 Waste Handling and Disposal

IC22 Eating and Drinking Establishments

IC23 Fire Sprinkler Testing/Maintenance

IC24 Wastewater Disposal Guidelines

And to:

With a copy to:

6. Purpose. It is expressly understood and agreed by all Parties that the sole purpose of this Memorandum is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between County and Tenant with respect to the Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for informational purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

COUNTY:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Laundry room	

Ice machine	
Hot water boiler	
Central AC	
Door electronic lock system	
Electronic lock	
Front desk computer	

Kitchen equipment	
Refrigerator	

Seller Signature: _____ Date: _____

County Signature: _____ Date: _____

Free recording in accordance with
California Government Code
Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

California Tax Credit Allocation Committee
915 Capitol Mall, Rm 485
Sacramento, CA 95814

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

**LEASE RIDER
AGREEMENT (TAX CREDITS)
Ground Lease**

TCAC NUMBER CA-
Project Homekey – Motel 6 (Costa Mesa)

THIS LEASE RIDER AGREEMENT (the "Lease Rider Agreement") is dated this day of _____, _____, and is made and entered into for reference purposes only, by and among the County of Orange, a political subdivision of the State of California (the "Lessor"), _____ (the "Lessee"), and the California Tax Credit Allocation Committee, a public agency of the State of California established under Section 50199.8 of the Health and Safety Code ("TCAC") in consideration of the following facts and circumstances:

- A. Lessor is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the "Property");
- B. Lessor and Lessee entered into the following ground lease of the Property: that certain ground lease, which is on file with the Lessor as a public record (the "Lease") and a memorandum of which was recorded in the official records of Orange County, California, as Instrument No. _____ (the "Memorandum of Lease");
- C. Pursuant to the Lease, Lessee has agreed to acquire a leasehold in the Property for a term described below in Paragraph 2.f. which is at least as long as the TCAC Regulatory Agreement and to develop, construct, rehabilitate, own, operate and manage a rental housing development on the Property consisting of not less than residential rental units. During the term of the Lease, Lessee is the owner of all of those certain buildings, improvements and fixtures now or hereafter erected on the Property described in the Lease, and all appurtenances thereto now or hereafter affixed to, placed upon or used in connection with such real property and owned by Lessee or in which Lessee has an interest, together with all additions to, substitutions for, changes in and replacements of the whole or any part of said articles of property (collectively, the "Improvements"). Collectively, the Lessee's leasehold interest in the Property and its

interest in the Improvements constructed pursuant to the Lease are hereinafter sometimes referred to as the Development (the "Development");

D. TCAC has authorized an allocation of federal low-income housing tax credits by a Reservation Letter dated _____ (the "Allocation") to Lessee to finance, in part, the Development, pursuant to the Low Income Housing Tax Credit Program ("Program"). The Allocation is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Lease Rider Agreement and the TCAC Regulatory Agreement which sets forth certain use restrictions affecting the Development, which TCAC Regulatory Agreement is to be recorded in Orange County, as required by Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively, "Section 42");

E. As a further condition of the Allocation and pursuant to the requirements of the Program, Lessee and TCAC will enter into a Regulatory Agreement, including any amendments thereto (the "Regulatory Agreement"), securing performance related to the Allocation, and governing the use, occupancy, operation, management and ownership of the Development. Consistent with the provisions of Section 17 hereof, Lessor and Lessee have agreed to waive any such provisions of the Lease in conflict with or which would frustrate Lessee's compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement;

F. In order to induce TCAC to make the Allocation, Lessor and Lessee have agreed to enter into and record this Lease Rider Agreement for the benefit of TCAC, its successors, and assigns; and

G. It is the intent of TCAC that, except in unique circumstances, it will exercise its rights and remedies under this Lease Rider Agreement only after written notice of any Lease defaults have been provided to Lessor, any Senior Lender, the Tax Credit Partner, and any other party known by TCAC to have either an ownership or other equitable interest in the Development. In addition, it is the intent of TCAC that the exercise of its rights and remedies under this Lease Rider Agreement generally shall be undertaken as part of a judicial action in a court of competent jurisdiction unless Lessor and any Senior Lenders otherwise agree.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, TCAC, Lessee and Lessor hereby agree as follows:

1. Definitions and Lease Rider Term.

a. As used herein, "Leasehold" means all of Lessee's leasehold interest in the Property described in Exhibit A, in the Development, in the Improvements now or hereafter located on the Property, all options contained in the Lease or granted in connection with the Lease, all other rights of Lessee under the Lease, and all subleases entered into in connection with the Lease (the "Subleases").

b. For the purposes of this Lease Rider Agreement, if Lessor is a corporate or governmental entity, the obligation to assert facts related to the “Lessor’s knowledge” shall include a duty for the Chief Real Estate Officer to perform or otherwise be responsible for pursuit of reasonably diligent efforts to ascertain the existence or nonexistence of the facts asserted, contemporaneous to the assertion. This duty may be fulfilled by use of an estoppel agreement executed by the Lessee.

c. For the purposes of this Lease Rider Agreement, the holders of all mortgage liens set forth in the Report and any other lenders approved by TCAC and all successors and assigns thereof including the holders of any mortgage lien against the Improvements or Lessee’s interest in the Leasehold are collectively referred to as “Senior Lenders.”

d. Lease Rider Agreement Term. This Lease Rider Agreement becomes effective on the date the TCAC Regulatory Agreement is recorded and remains in effect for at least the term of the Regulatory Agreement. Upon the expiration or sooner termination of the TCAC Regulatory Agreement, this Lease Rider Agreement shall terminate and be of no further force or effect.

2. Representations and Warranties of Lessor and Lessee. Lessor and Lessee hereby represent and warrant to TCAC as of the date of this Lease Rider Agreement as follows:

a. Title. (1) By Lessor: Lessor warrants and represents to TCAC that, to the best of Lessor’s knowledge, Lessor’s fee interest in the Property is free and clear of all liens, encumbrances, covenants, easements, licenses, judgments, or other matters of record except those shown as affecting the fee interest of the Property in that certain Preliminary Report regarding the Property issued on _____ by _____, Order # _____, Policy No. _____ (the “Report”). Lessor has not required or permitted, and has no knowledge of any other matters of record to be recorded that are not contained in the Report.

(2) By Lessee: Lessee has entered into one or more loan agreements (the “Agreement(s)”) which will be secured as more fully described in the Agreement(s). Lessee warrants and represents that it will provide a true and correct copy of said Agreement(s) to TCAC as part of TCAC’s placed in service review, for which the issuance of the IRS Form 8609 shall constitute approval.

b. Priority. Lessor warrants and represents to TCAC that except as otherwise referenced in the Report, the Lease is superior to any and all mortgage liens on the Property and nothing encumbers fee title of the Property which would interfere with Lessee’s ability to construct and operate the Development on the Property.

c. Transfers by Lessor. Lessor warrants and represents to the best of Lessor’s knowledge that it has not assigned, mortgaged, or otherwise hypothecated or transferred, or agreed to assign, mortgage or otherwise hypothecate or transfer, its interest in the Property in whole or in part, except as referenced in the Report

and except as security for any loans or any other liens, conditions, covenants, or restrictions on the Property identified in the Report and approved in writing by TCAC.

d. Status of Lease. Lessor warrants and represents that:

(1) Lessor is the current Lessor under the Lease. To the best of Lessor's knowledge, the Lease is in full force, the Lease is not void, voidable or terminable as of the date hereof without an uncured default by Lessee except pursuant to Section 5 at the option of any party thereto or of any other person or entity claiming an interest in or to such Lease or the Development, and to the best of Lessor's knowledge, there has been no default thereunder on the part of Lessee nor has any event occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Lessor has not given notice of any violation under the Lease to Lessee. Lessor has not been informed of and has not otherwise received notice from Lessee or from any other person or entity concerning any alleged default on the part of Lessor under the Lease. To the best of Lessor's knowledge, there exist no defenses or offsets to enforcement of the Lease by Lessee.

(2) Any consent or approval of any third party (including any lender or government agency) that is required in order for Lessor to deliver this Lease Rider Agreement has been obtained.

(3) To the best of Lessor's knowledge, no alterations, improvements or additions now exist on the Property that have not been approved by the Lessor.

e. Other Agreements. All terms and conditions of the Lessee's tenancy under the Lease are set forth in the Lease and Lessor and Lessee each certify to the best of its knowledge that there have been no other agreements and no further or other supplements, amendments, modifications or extensions thereof except those submitted to and approved by TCAC.

f. Lease Term. The date of the commencement of the Lease term is _____ and will end on _____ unless terminated sooner pursuant to its terms and consistent with this Lease Rider Agreement. All conditions precedent to the effectiveness of the Lease or the exercise of any of Lessee's rights thereunder at the effective date of the Lease have been fully satisfied.

g. Development. To the best of Lessor's knowledge, the Improvements constructed, or to be constructed, by Lessee on the Property satisfy or are expected to satisfy all requirements affecting the design, use or characteristics of such Improvements imposed by Lessor under the Lease or otherwise, including a requirement by Lessor for Lessee to comply with any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.

h. Insurance. All notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered to and approved by Lessor.

3. Cancellation, Transfer of Interest.

a. Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor and Lessee agree that so long as TCAC, its successor or assigns holds the Regulatory Agreement encumbering the Development, no termination of the Lease or efforts by Lessor to terminate the Lease except a termination consistent with Section 5, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of TCAC, which consent shall be in TCAC's reasonable discretion and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. TCAC shall have 30 days after its receipt of such a notice and any clarifications thereof requested by TCAC to consent to or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation. Any attempt by Lessor to take such action shall be void without TCAC's prior written consent or implied consent as provided for in this Section 3.a.

b. Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development unless Lessor requires, and any purchaser, assignee, or transferee agrees, that the purchaser, assignee, or transferee will expressly assume all obligations of Lessor under the Lease and this Lease Rider Agreement by a written instrument recordable in the Official Records. Any variation from those obligations shall require prior written approval of TCAC, which consent shall be in TCAC's reasonable discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. If Lessor or Lessor's successor is seeking a variation from these obligations, Lessor or Lessor's successors and assigns shall provide TCAC with copies of all documents related to the transfer, conveyance, sale, hypothecation, assignment, encumbrance or lien at least 30 days prior to the effective date of that transaction and TCAC shall have 30 days after its receipt to reasonably consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation.

c. Foreclosure. Nothing contained in this Lease Rider Agreement shall prevent a Senior Lender from foreclosing on its security interest or accepting a conveyance in lieu of foreclosure.

d. No Merger. There shall be no merger of the Lease or any interest in the Lease, nor of the Leasehold interest, with the fee estate in the Property if the Lease or such interest therein, or such Leasehold interest may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the Leasehold interest created thereby may be conveyed or mortgaged in a leasehold mortgage, deed of trust, or other security instrument to a leasehold mortgagee that shall hold the fee estate in the Property or any interest of the Lessor under the Lease.

4. Consent to Assignment, Payment of Rent.

a. Subject to any matters of record as referenced in the Report, the rights of Senior Lenders, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:

(1) Lessee's encumbering the Lease, the Leasehold and the Development by the Regulatory Agreement; possession of the Leasehold and any Development thereon by TCAC or by a receiver under the Regulatory Agreement; and sale of the Leasehold and the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement;

(2) Assignments to TCAC or its designee of any subleases and any and all rents from such subleases; and

(3) Sale or assignment of all or any part of any interest in the Leasehold to any purchaser or transferee pursuant to a court order or other agreement enforcing the Regulatory Agreement (such purchaser or transferee, including TCAC, is collectively referred to as the "Transferee"), and to any subsequent transfers (all such assignments, transfers, and subsequent transfers referred to in this Lease Rider Agreement as the "Transfer").

b. Nothing in this Lease Rider Agreement, in the Regulatory Agreement or in the Lease shall impose on TCAC the obligations of Lessee under the Lease or require TCAC to assume the Lease unless TCAC takes possession or ownership of the Development pursuant to a court order or other agreement under the Regulatory Agreement, or becomes the lessee under the Lease or a New Lease (defined in Section 6, below).

5. Notice of Defaults; Termination Notice.

a. Notice and Cure. Lessor shall provide concurrently to TCAC a written copy of all notices and demands, including, without limitation, notices of default or breach which Lessor gives, delivers, or sends to Lessee under the Lease. No notice or demand under the Lease shall be effective as to TCAC unless and until a copy of such notice is provided to TCAC as provided herein. Any notice of default under the Lease or this Lease Rider Agreement shall describe the default(s) with reasonable detail. TCAC shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to TCAC is not given or is delayed for any reason, the period of time within which TCAC may cure any such breach or default shall commence upon receipt by TCAC of such notice. Lessor and Lessee authorize TCAC to enter the Property and Improvements after reasonable prior written notice or pursuant to a court order for the purpose of mitigating defaults or exercising its right to cure and any other powers given TCAC under the Regulatory Agreement, this Lease Rider Agreement or the Lease.

b. Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure a default, Lessor shall not terminate the Lease on account of such default but shall give TCAC a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Lessor intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after TCAC's receipt of the Termination Notice, provided that Lessor agrees to extend such termination date for a reasonable period if TCAC reasonably requires additional time to accommodate TCAC's taking possession of the Development where possession is necessary to cure Lessee's default, all of which is subject to any Senior Lender's security instruments. In the event the default results in the existence of an immediate or imminent serious health and safety threat to the residents or the public, Lessor may request TCAC to approve a shorter termination date which shall not be unreasonably denied. In addition, TCAC may waive its right to the 90-day period to cure under the Termination Notice after its receipt of the Termination Notice if TCAC determines that it will not take action to effect a cure for the default. No Termination Notice shall become effective to terminate the Lease if:

(1) Except as provided in Section 5.c., within ninety (90) days after receipt of the Termination Notice, TCAC cures all defaults which can be cured by payment or expenditure of money or without possession of the Development; or provides reasonable assurance and undertakings for the cure of such default. To effect a cure of Lessee's default, TCAC may, subject to the rights of all Senior Lenders, make any repair or improvement, do any other act or thing required of Lessee under the Lease, or do any act or thing which may be necessary or proper to prevent termination of the Lease. TCAC and its agents and contractors, subject to the rights of all Senior Lenders, shall have full access to the Property and Improvements for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by TCAC

shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee; or

(2) TCAC commences and diligently pursues judicial and/or administrative proceedings commenced under the Regulatory Agreement to cure a default.

(3) If TCAC has not cured a default upon the expiration of such Termination Notice pursuant to Subsection (1) above or fails to commence and diligently pursue a cure pursuant to Subsection (2) above, and subject to compliance with other provisions of this Section 5.b. and any limitations on termination in the Lease, Lessor may terminate the Lease and pursue such other remedies as are available under the terms of the Lease.

c. Defaults Not Susceptible to TCAC Cure. TCAC shall not be required to perform any act which is not susceptible to performance by TCAC, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay or comply with any lien, charge or encumbrance which is junior in priority to the Regulatory Agreement, or to pay any amount owed under an indemnity of Lessor by Lessee based on an event occurring prior to TCAC's possession of the Development. If any such act not susceptible to performance by TCAC constitutes a breach under the Lease, Lessor may resort to any and all of its remedies for such breach under the Lease.

d. Reimbursement of Lessor's Payment of Arrears. Lessor agrees that if Lessor cures Lessee's failure to make any payment due under the Lease or any loan identified in Section 2.a., it shall seek reimbursement of amounts so paid solely from Lessee and TCAC shall have no obligation to pay such amounts to Lessor.

e. Waiver of Breach or Default. Subject to the rights of Senior Lenders, on transfer of the Leasehold interest pursuant to a court order or other agreement enforcing the Regulatory Agreement, all violations, defaults and breaches by Lessee under the Lease occurring prior to such transfer, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed personal obligations of Lessee, and TCAC or other Transferee shall be entitled to the New Lease as described in Section 6 below without incurring or assuming any liability or obligation of, or claim against, Lessee under the Lease. However, upon transfer of the Leasehold interest, TCAC or the Transferee, as applicable, shall be responsible for correcting all defaults in existence at the time of the transfer; Lessor may exercise its rights under Section 5.b. if TCAC or the Transferee fails to correct any such default within a reasonable time. Nothing in this section shall be deemed a waiver of any claim by Lessor, TCAC, or other Transferee against Lessee under the Lease.

f. Enforcement Not a Breach. Any action taken by TCAC to enforce its rights under this Lease Rider Agreement with respect to Lessee with respect to any of the documents governing the Allocation including, without limitation, any actions taken to collect any amounts due and owing to TCAC or any action to appoint a

receiver for the Development or to otherwise ensure compliance with the Regulatory Agreement, shall not constitute or result in a breach or violation of the Lease.

g. Status Quo Ante. Any default by Lessee shall not prejudice TCAC if TCAC chooses to cure such default within the applicable grace period specified by this Lease Rider Agreement or the Lease, and Lessor acknowledges and agrees that upon TCAC's cure of any such default, the Lease shall be restored status quo ante.

6. New Lease.

a. Conditions. Section 5 hereof notwithstanding, and subject to the rights of Senior Lenders as provided in their security instruments, Lessor agrees to comply with the requirements of Section 6.b. if the following conditions specified in this Section 6.a. apply:

(1) The Lessee's Lease or a Transferee's New Lease is terminated for any reason whatsoever and TCAC or a subsequent Transferee acquires possession or ownership of the Development as a result of TCAC enforcing its remedies authorized by the Regulatory Agreement; and

(2) TCAC or other Transferee, whether or not such party has assumed the Lease, requests Lessor in writing pursuant to Section 6.b. to enter into a new lease (the "New Lease") of the Property within ninety (90) days after TCAC or the Transferee takes possession or ownership of the Development either as a result of a court order or other agreement under the Regulatory Agreement. The New Lease shall be at the rent of, and consistent with, the terms, provisions, covenants, options and agreements contained in the terminated Lease, as amended, or granted by the Lessor in connection with the Lease, all as modified or supplemented by this Lease Rider Agreement unless Lessor agrees to lower rent or less restrictive terms and conditions.

b. Obligations. If the conditions specified in Section 6.a. have been satisfied, and subject to the provisions of matters of record as referenced in the Report and the rights of Senior Lenders in their security instruments, Lessor shall:

(1) upon receipt of the request for New Lease described in Section 6.a.(2) above, enter into a New Lease of the Property with TCAC, its nominee, or its successor-in-interest or other Transferee, for the remainder of the term of the Lease, effective as of the date of the termination of the Leasehold or conveyance of the Development pursuant to a court order or other agreement under the Regulatory Agreement;

(2) convey to TCAC, its nominee or its successor-in-interest or other Transferee, all title and interest of the Lessee to the Improvements and Leasehold encumbered by the Regulatory Agreement, if any, which may

become or have become vested in Lessor as a result of any termination of the Lease or conveyance by court order or other agreement under the Regulatory Agreement, so long as the New Lease contains provisions that require TCAC, its nominee, or its successor-in-interest or other Transferee to reconvey all title and interest conveyed by Lessor's grant deed in the Improvements at the termination of the term of the New Lease; and

(3) assign to TCAC, its nominee, or its successor-in-interest or other Transferee, all of Lessor's interest as landlord, if any, in all existing Subleases of all or any part of the Development and all attornments given by the sublessees under such Subleases, provided that TCAC, its nominee, or its successor-in-interest shall reconvey all such title and interest conveyed by Lessor in all existing Subleases in all or any part of the Development at the termination of the New Lease.

c. Priority. The Leasehold interest and any other interest (if any) in the Development granted to TCAC, its nominee or its successor-in-interest or other Transferee under this Section 6 shall be prior to any mortgage or other lien, charge or encumbrance on the Development created by Lessor or Lessee, except for the liens of Senior Lenders or as approved in writing by TCAC or as referenced in the Report.

7. Successors to TCAC. Subject to Section 4 hereof, if the Leasehold is transferred pursuant to a court order or other agreement enforcing the Regulatory Agreement, Lessor shall recognize the Transferee as the tenant under the Lease, subject to the liens of Senior Lenders. Anything in the Lease notwithstanding, the rights and benefits of TCAC under this Lease Rider Agreement shall benefit and may be exercised by any Transferee. The holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by TCAC or its successor(s) after TCAC acquires the Leasehold interest or enters into a New Lease under this Lease Rider Agreement shall be entitled to rely on continuation of the same rights and benefits of TCAC under this Lease Rider Agreement.

8. Diligence of TCAC. So long as TCAC is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessor or Lessee, from commencing or prosecuting its remedies under the Regulatory Agreement or other appropriate proceedings in the nature thereof, or undertaking or completing any of TCAC's rights or remedies under the Lease or this Lease Rider Agreement, TCAC shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that TCAC shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

9. Certificates.

(a) Certificate by Lessor. Within fifteen (15) calendar days after written request made by TCAC, Lessor shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's Leasehold interest, a certificate declaring, to the best of Lessor's knowledge, (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that such Lease or New Lease remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Property reasonably requested by TCAC; and iv) that Lessor understands the recipient will rely on the certificate and that the Lessor will describe in reasonable detail any exceptions to the foregoing statements.

(b) Certificate by Lessee. Within fifteen (15) calendar days after written request made by TCAC, Lessee shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's Leasehold interest, a certificate declaring to the best of Lessee's knowledge (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that such Lease or New Lease remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Property, Leasehold or the Development reasonably requested by TCAC; and (iv) that Lessee understands the recipient will rely on the certificate and that the Lessee will describe in reasonable detail any exceptions to the foregoing statements.

10. Notices. Notices and other communications required by this Lease Rider Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To TCAC: California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
Sacramento, CA 95814
Attn. Executive Director

To Lessor: County of Orange
c/o CEO Real Estate
400 W. Civic Center Dr., 5th Floor
Santa Ana, CA 92701
Attn: Thomas A. Miller, Chief Real Estate Officer

To Lessee:

These addresses may be changed by a written notice given by any party hereto to the other parties in the same manner provided in this Section. Notices shall be effective on receipt.

11. TCAC's Rights Against Lessee. Nothing in this Lease Rider Agreement shall limit or restrict TCAC's rights and remedies under the Regulatory Agreement, or any other agreement between TCAC and Lessee.

12. Successors and Assigns. This Lease Rider Agreement shall inure to the benefit of and bind the successors and assigns of TCAC, Lessor and Lessee.

13. Uninsured Hazard. Lessor agrees that neither TCAC nor any person acquiring the Development, or a portion of the Leasehold pursuant to a court order or other agreement enforcing the Regulatory Agreement, nor the lessee under a New Lease pursuant to Section 6 hereof, nor any successive owner of a portion of the Development after such transfer or New Lease shall have any obligation hereunder or under the Lease or New Lease to repair or reconstruct any damage or loss to the Development which occurred prior to such transfer or New Lease and which is due to a hazard not required to be covered by insurance under the Lease or New Lease. However, if the damage or loss is not corrected and constitutes a breach of the Lease or New Lease, Lessor may exercise its rights under Section 5.

14. Duty to Repair. Lessor agrees that if TCAC, its nominee, or its successor-in-interest succeeds to Lessee's Leasehold interest in the Property and if the Development shall have been or becomes materially damaged before or after the date of such acquisition, TCAC's, its nominee's, or its successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by TCAC, its nominee, or its successor-in-interest by reason of that damage or ii) the amount TCAC, its nominee, or its successor-in-interest would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease. However, if the damage or loss is not corrected and constitutes a breach of the Lease or New Lease, Lessor may exercise its rights under Section 5.

15. Options. Lessor and Lessee agree that TCAC or its successor-in-interest or other Transferee, after its acquisition of the Leasehold, may exercise any option to extend the term of the Lease or New Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease or the New Lease.

16. Limitation on Liability. If TCAC agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, then unless so ordered by a court or as agreed to by TCAC, any Transferee, and any secured creditors, neither TCAC nor Transferee shall have any obligation under the Lease or the New Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including

architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or TCAC's agreement to be bound by the Lease or the New Lease except for matters of record identified in the Report at the time of execution of this Lease Rider Agreement or any breach in existence at the time of acquisition of the Leasehold. Nothing in this Lease Rider Agreement or in the Lease or New Lease shall impose on TCAC any liability to perform the obligations of Lessee under the Lease or New Lease or require TCAC to assume the Lease or New Lease unless and until TCAC acquires the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement. After acquiring the Development in such a manner, TCAC shall be liable to perform Lessee's obligations only until TCAC assigns or transfers the Leasehold. TCAC shall not, however, be required to cure Lessee's defaults occurring before TCAC's acquisition of the Development in such a manner except that TCAC or the Transferee must cure any defaults in existence at the time of transfer within a reasonable period of time.

17. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of TCAC's rights under the Lease as a party with a recorded encumbrance). In the event of any conflict or inconsistency between the terms of the Lease and the terms of this Lease Rider Agreement, except for any term expressly excluded or modified by Section 21, the terms of this Lease Rider Agreement shall govern and control, and the Lease shall be deemed to be modified hereby. Notwithstanding the foregoing, nothing contained herein shall affect the rights of Senior Lenders or the Tax Credit Partner, nor shall anything contained herein subordinate the lien of any Senior Lender to any rights of TCAC hereunder.

18. Regulatory Agreement Remedies. Nothing in this Lease Rider Agreement is intended to create enforcement rights under the Regulatory Agreement that do not otherwise exist in the Regulatory Agreement.

19. Enforcement. Notwithstanding anything to the contrary in the Lease and notwithstanding the fact that the Lease Rider Agreement is recorded against the Leasehold interest in the Property, Lessor hereby expressly agrees that during the term of the Regulatory Agreement, any violation of the Lease Rider Agreement, including but not limited to any termination, subordination, cancellation, surrender, amendment or modification of the Lease in violation of Section 3 of this Lease Rider Agreement, shall be deemed ineffective. Lessor further agrees, that during the term of the Regulatory Agreement, TCAC shall have standing to enforce and preserve TCAC's rights under the terms of this Lease Rider Agreement and the Regulatory Agreement.

20. Subordination. Notwithstanding anything to the contrary contained elsewhere herein, the parties hereto hereby agree that this Lease Rider Agreement (and all amendments, modifications and supplements hereto) is hereby irrevocably and unconditionally made subject and subordinate in all respects to (a) all existing and future deeds of trust and mortgages approved by TCAC now or hereafter encumbering all or any part of the Lessee's right, title and interest under the Lease (and to all

amendments, modifications and supplements thereto), and (b) all rights granted to any holder of any such deed of trust or mortgage under any term or provision of the Lease. Each existing and future holder of any such deed of trust or mortgage (all of whom shall also constitute "Senior Lenders" for all purposes of this Lease Rider Agreement) is hereby made an express third-party beneficiary of the foregoing sentence.

21. Additional Provisions.

Notwithstanding anything to the contrary in this Lease Rider Agreement, the Lessor, Lessee and TCAC agree to the following:

(a) As referenced in the Recitals, subpart E, consistent with the provisions of Section 17 hereof, Lessor acknowledges that Lessor and Lessee have agreed to modify any such provisions of the Lease in conflict with the Regulatory Agreement in favor of the terms of the Regulatory Agreement.

(b) Section 1.d. shall read: "Upon the expiration or sooner termination of the Regulatory Agreement, this Lease Rider Agreement shall terminate and be of no further force or effect without further action of any of the parties hereto."

(c) Section 3.a. shall read: "Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor and Lessee agree that so long as TCAC, its successor or assigns holds the Regulatory Agreement encumbering the Development, no termination of the Lease or efforts by Lessor to terminate the Lease except a termination consistent with Section 5, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of TCAC, which consent shall be in TCAC's reasonable discretion and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe.

TCAC shall have 30 days after its receipt of such a notice and any clarifications thereof requested by TCAC to consent to or deny any such variation or termination from those obligations.

Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation or termination. Any attempt by Lessor to take such action shall not be effective until TCAC's prior written consent or implied consent is received as provided for in this Section 3.a."

(d) Section 3.b. shall read, "Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or

appropriate pursuant to such matters of record, Lessor agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development which will affect or impact the Development and the Improvements during the term of the Regulatory Agreement unless Lessor requires, and any purchaser, assignee, or transferee agrees, that the purchaser, assignee, or transferee will expressly assume all obligations of Lessor under the Lease and this Lease Rider Agreement by a written instrument recordable in the Official Records. Any variation from those obligations shall require prior written approval of TCAC, which consent shall be in TCAC's reasonable discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. If Lessor or Lessor's successor is seeking a variation from the Lease and the Regulatory Agreement, Lessor or Lessor's successors and assigns shall provide TCAC with copies of all documents related to the transfer, conveyance, sale, hypothecation, assignment, encumbrance or lien at least 30 days prior to the effective date of that transaction and TCAC shall have 30 days after its receipt to reasonably consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation."

(e) Section 3.c. shall read, "Foreclosure. Nothing contained in this Lease Rider Agreement shall prevent a Senior Lender from foreclosing on its security interest in the leasehold interest created by the Lease or accepting a conveyance in lieu of foreclosure."

(f) Section 4.a.(3) shall read, "(3) For each Sale or assignment of all or any part of any interest in the Leasehold to any purchaser or transferee pursuant to a court order or other agreement enforcing the Regulatory Agreement (such purchaser or transferee, including TCAC, is collectively referred to as the "Transferee"), and to one subsequent transfer (all such assignments, transfers, and subsequent transfers referred to in this Lease Rider Agreement as the "Transfer")."

(g) Section 5.b. shall read, "Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure a default, Lessor shall not terminate the Lease on account of such default but shall give TCAC a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Lessor intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after TCAC's receipt of the Termination Notice, provided that Lessor agrees to extend such termination date for a reasonable period if TCAC reasonably requires additional time to accommodate TCAC's taking possession of the Development where possession is necessary to cure Lessee's default, all of which is subject to any Senior Lender's security instruments. In the event the default results in the existence of an immediate or imminent serious health and safety threat to the residents or the public, Lessor may request TCAC to approve a shorter termination date which shall not be unreasonably denied, withheld or delayed. In addition, TCAC may waive its right to the 90-day period to cure under the Termination

Notice after its receipt of the Termination Notice if TCAC determines that it will not take action to effect a cure for the default. No Termination Notice shall become effective to terminate the Lease if:"

22. Acknowledgment. Lessor and Lessee acknowledge that TCAC is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in allocating the allocation of low income housing tax credits to Lessee, and warrants and affirms to and for the benefit of TCAC that each of their respective representations set forth herein is true, correct and complete as of this date.

TCAC:
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE,
a public agency of the State of California

BY: _____

Executive Director

LESSOR:
COUNTY OF ORANGE,
a political subdivision of the State of California

By: _____
Thomas A. Miller, Chief Real Estate Officer

Approved as to form, County of Orange:

Michael A. Haubert

Digitally signed by Michael A.
Haubert
DN: cn=Michael A. Haubert,
ou=County of Orange, ou=County
Council,
email=mmichael@haubert@oc.org,
c=us, ca=US
Date: 2022.10.12 13:58:42 -0700

LESSEE:

a California limited partnership

By:

By:

By: _____

Name: _____

Its: _____

By:

By:

By: _____

Name: _____

Its: _____

EXHIBIT A
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF COSTA MESA IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 28, 29 AND 30 OF TRACT NO. 114, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 14 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS PER LOT LINE ADJUSTMENT LL-90-02 RECORDED APRIL 12, 1990 AS INSTRUMENT NO. 90-192418 OF OFFICIAL RECORDS.

APN: 426-053-15

(End of Legal Description)



MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Chairman Doug Chaffee, Fourth District

Date: October 14, 2022

RE: Supplemental Item for the October 18, 2022 Board of Supervisors Meeting

Doug Chaffee

S42G

Please add a Supplemental Agenda Item to the October 18, 2022, meeting of the Board of Supervisors to allow the board to consider adopting the attached resolution in support of *Operation Green Light for Veterans* which encourages the illumination of green bulbs from November 7th -13th in honor and support of the veteran community.

RECEIVED
2022 OCT 12 PM 12:57
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Supporting Operation Green Light for Veterans

WHEREAS, the residents of Orange County have great respect, admiration, and the utmost gratitude for all of the men and women who have selflessly served our country and this community in the Armed Forces; and,

WHEREAS, the contributions and sacrifices of the men and women who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by our citizens; and,

WHEREAS, the County of Orange seeks to honor these individuals who have paid the high price for freedom by placing themselves in harm's way for the good of all; and,

WHEREAS, Veterans continue to serve our community in the American Legion, Veterans of Foreign Wars, religious groups, civil service, and by functioning as County Veteran Service Officers in 29 states to help fellow former service members access more than \$52 billion in federal health, disability and compensation benefits each year; and,

WHEREAS, approximately 200,000 service members transition to civilian communities annually; and,

WHEREAS, an estimated 20 percent increase of service members will transition to civilian life in the near future; and,

WHEREAS, studies indicate that 44-72 percent of service members experience high levels of stress during transition from military to civilian life; and,

WHEREAS, active Military Service Members transitioning from military service are at a high risk for suicide during their first year after military service; and,

WHEREAS, the National Association of Counties encourages all counties, parishes and boroughs to recognize Operation Green Light for Veterans; and,

WHEREAS, the County of Orange appreciates the sacrifices of our United States Military Personnel and believes specific recognition should be granted; and,

WHEREAS, with designation as a Green Light for Veterans County, the County of Orange hereby declares from October through Veterans Day, November 11th 2022, a time to salute and honor the service and sacrifice of our men and women in uniform transitioning from Active Service; and,

NOW, THEREFORE, BE IT RESOLVED THAT THE ORANGE COUNTY BOARD OF SUPERVISORS, in observance of Operation Green Light, encourages its citizens in patriotic tradition to recognize the importance of honoring all those who made immeasurable sacrifices to preserve freedom by displaying a green light in a window of their place of business or residence.



County Executive Office

Memorandum

RECEIVED
2022 OCT 13 PM 3:06

October 13, 2022

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of
Orange, ou=CEO,
email=frank.kim@ocgov.com, c=US
Date: 2022.10.13 14:52:23 -0700

S4214


The County Executive Office is requesting a Supplemental Agenda Staff Report for the October 18, 2022, Board Hearing.

Agency: OC Community Resources
Subject: Riviera Motel Additional Loan Request
Districts: 4th District

Reason Item is Supplemental: This item needs to be heard at the October 18, 2022, meeting for timely approval of various actions to meet the Homekey Program construction completion milestone deadline for the Riviera Motel Homekey Project. This Agenda Staff Report is being filed as a Supplemental Item due to increases in construction costs that required additional time to coordinate strategies to fill the financial gap and update the financing.

Justification: If this item does not come at the requested Board meeting, the Riviera Motel Homekey project will not be able to close on construction financing in November 2022 and complete construction by the Homekey Program's 12-month construction completion milestone deadline.

Concur:



Doug Chaffee, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel



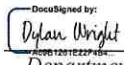
SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 10/18/22

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): 4


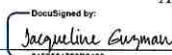
SUBMITTING AGENCY/DEPARTMENT: OC Community Resources

DEPARTMENT HEAD REVIEW: 
Dylan Wright
Department Head Signature

DEPARTMENT CONTACT PERSON(S): Dylan Wright (714) 480-2788
Julia Bidwell (714) 480-2991

RECEIVED
 OCT 19 PM 3:06
 CLERK'S USE ONLY

SUBJECT: Riviera Motel Additional Loan Request

<p>CEO CONCUR</p>  <p><small>Digitally signed by Frank Kim DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US Date: 2022.10.13 14:52:49 -0700</small></p> <p><i>CEO Signature</i></p>	<p>COUNTY COUNSEL REVIEW</p> <p style="text-align: center;"><u>No Legal Objection</u> Action</p>  <p><small>DocuSigned by: Jacqueline Gorman 045258475903480</small></p> <p><i>County Counsel Signature</i></p>	<p>CLERK OF THE BOARD</p> <p style="text-align: center;">Discussion</p> <p style="text-align: center;">3 Votes Board Majority</p>
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: See Financial Impact Section **County Audit in last 3 years** No

Prior Board Action: 9/27/22 #34, 6/28/2022 #42, 12/14/2021 #S39G

RECOMMENDED ACTION(S)

1. Authorize the OC Community Resources Director or designee to increase the amount of the 2020 Supportive Housing Notice of Funding Availability by \$1,000,000 with available funding as outlined in the Financial Impact Section.
2. Authorize the OC Community Resources Director or designee to utilize funds as outlined in Financial Impact Section for additional loan financing to Jamboree Housing Corporation or JHC-Beach3 LLC for partial development costs, including acquisition and/or rehabilitation of the property, associated with the Riviera Motel, a 21-unit motel conversion located at 11892 Beach Boulevard in the City of Stanton.
3. Approve additional construction loan commitment to Jamboree Housing Corporation or JHC-Beach3 LLC by up to \$1,000,000, with a per unit loan limit of approximately \$142,857, exceeding the per unit loan limit under the 2020 Supportive Housing Notice of Funding Availability for a development in the City of Stanton, for an amount not to exceed \$3,032,983, subject to contingencies outlined in this Agenda Staff Report.

4. Approve subordination at construction financing of the new \$1,000,000 loan and previously approved \$500,000 loan to a first trust deed construction loan of approximately \$2,850,000 (with a 10 percent cost increase contingency) and subordination at permanent loan financing of all County loans for a combined not to exceed amount of \$3,032,983 to an amortized first trust deed permanent loan of approximately \$1,305,864 as set forth in this Agenda Staff Report and authorize the OC Community Resources Director or designee to subordinate to additional senior debt up to 100 percent of the cumulative loan-to-value based on the as-built appraised market value, if necessary, based on any future changes in project financing.

5. Authorize the OC Community Resources Director or designee to execute subordination agreements; standard set of loan documents and restrictive covenants; and such additional agreements, contracts, instructions and instruments necessary or appropriate for construction and permanent loan financing.

SUMMARY:

Approval of the additional County loan commitment and subordination of the new and previously approved County loans at construction and permanent financing will help facilitate long-term financing of the Riviera Motel and will support the production of supportive housing in Orange County.

BACKGROUND INFORMATION:

Building on the success of the first round of Homekey funds, the Homekey Program Round 2 (Homekey) is a state grant funding program administered by the California Department of Housing and Community Development (State HCD). Approximately \$1.45 billion in grant funding was made available statewide as part of the Round 2 Notice of Funding Availability (NOFA) to continue the State's efforts to rapidly expand housing for persons experiencing homelessness or at risk of homelessness and who are inherently impacted by or at increased risk due to the COVID-19 pandemic. In Round 1 of Homekey, the County was awarded two Homekey projects for funding totaling over \$25 million for the creation of 130 permanent supportive housing units.

On December 14, 2021, the Board of Supervisors (Board) approved the selection of Riviera Motel (Development) for utilization of 20 Veterans Affairs Supportive Housing, Mainstream and/or Housing Choice Project-Based Vouchers and up to \$1,532,983 in Mental Health Services Act (or other dedicated housing funds including, but not limited to, Housing Successor and Federal HOME funds) for loan financing to the developer, Jamboree Housing (Developer), or JHC-Beach3 LLC, a limited liability company formed by the Developer, for this Development. The Board also approved submission of the Development for Round 2 Homekey funding and was awarded \$6,070,000 in funding. On June 28, 2022, the Board approved the commitment of an additional \$500,000 loan for construction financing to help fill a gap based on increasing construction costs.

On September 27, 2022, the Board authorized OC Community Resources (OCCR) to utilize up to \$21 million in previously appropriated American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds (ARPA-SLFRF) to increase the 2020 Supportive Housing NOFA by \$20.1 million (or subsequent NOFA as approved by the Board) and return to the Board for funding commitments to individual projects.

The Development is a rehabilitation and adaptive re-use of a 21-room motel into Permanent Supportive Housing (PSH). Twenty PSH units will target individuals who are at-risk of homelessness, homeless or chronically homeless earning no more than 30 percent of the Area Median Income (AMI) including nine

units set-aside for individuals who meet the Mental Health Services Act (MHSA) eligibility criteria and 10 units for Veterans Affairs Supportive Housing (VASH) eligible individuals. One manager's unit will be provided onsite.

All 20 PSH units will be restricted by the County for 55 years via an unsubordinated Regulatory Agreement as required under the Homekey Program including nine units for MHSA eligible individuals experiencing homelessness earning at or below 30 percent AMI under MHSA funding, four units for homeless households earning at or below 30 percent AMI under the previous additional \$500,000 County construction loan and seven units for homeless households earning at or below 30 percent AMI under the current \$1 million construction loan funding. The specific rent and occupancy restrictions may ultimately change based on the final financing structure of the project.

After receiving a preliminary construction cost estimate at the beginning of construction loan closing, the Developer identified a gap based on increasing construction costs which the County filled with the additional \$500,000 commitment approved by the Board on June 28, 2022. In September 2022, the Developer received the final construction cost bids from the contractor and again based on shortage of and increasing costs of materials, labor and inflation, construction costs have significantly increased. In reducing costs, the Developer made a decision to select their in-house construction company, Quality Development Company, Inc. (QDCI), who provided a lower bid/schedule of values and has a construction timeframe of approximately 20 months. The 20-month timeframe accounts for the current switchgear lead time of 18 months which is a typical industry standard due to material shortages of insulation, aluminum and metals included in the manufacturing of switchgears. The end result is a financing gap of \$1 million for the Development and the Developer is seeking financial assistance from the County after reducing costs to the extent feasible. The City of Stanton was also consulted but did not have additional funding resources to contribute.

Under the 2020 NOFA policies, the Developer can request \$125,000 per unit for a development located in a participating city; however, due to the Development's financing gap and limited available resources to fill the gap and with the quickly approaching deadline to close on construction loan financing, OCCR recommends exceeding the allowable per unit loan limit and underwriting the Development with an approximately \$142,857.14 per unit loan limit for seven units, totaling \$1 million.

The additional County loan commitment to the Development will help fill a financing gap so the Developer can close on the construction loan financing and start construction. With the 20-month construction timeframe, County staff and the Developer met with State HCD staff to discuss next steps and with their advisement and support, the County proceeded to submit an extension request to push out the current construction completion milestone from the August 25, 2023, deadline to July 31, 2024. Pending any questions or additional information needed from State HCD, the extension request is expected to be approved in October/November 2022.

Below are the updated financial summary highlights of the Construction and Permanent Financing phase of the Project:

Construction Sources:

Construction Loan	\$2,850,000
County of Orange (HOME)	\$500,000
County of Orange (Current Request/ARPA-SLFRF)	\$1,000,000
City of Stanton	\$2,500,000
Deferred Developer Fee	\$18,630

California Department of HCD Homekey Program (Grant)	\$6,070,000
Adaptive Reuse Grant	\$75,000
Total Sources of Funds	\$13,013,630

Permanent Sources:

Permanent Loan	\$1,305,864
County of Orange (MHSA)	\$1,532,983
County of Orange (HOME)	\$500,000
County of Orange (Current Request/ARPA-SLFRF)	\$1,000,000
City of Stanton	\$2,500,000
Adaptive Reuse Grant	\$75,000
Deferred Developer Fee	\$29,783
California Department of HCD Homekey Program (Grant)	\$6,070,000
Total Sources of Funds	\$13,013,630

Note: Financing subject to change prior to construction and completion of Development. Underwriting guidelines per 2020 NOFA.

County Loan Terms:

Construction Loan-ARPA:	\$1,000,000
Interest Rate:	3 percent simple
Term:	55 years
Security:	Third Deed of Trust at Construction Financing and Fourth Deed of Trust at Permanent financing
Payments:	Residual Receipts share per the 2020 NOFA

Based on the updated financing, the previously approved \$500,000 loan and additional \$1 million loan will be funded at construction and will be subordinate to a first trust deed construction loan of approximately \$2.96 million (with a 10 percent cost increase contingency). The previously approved County permanent loan of \$1,532,983 and \$500,000 County loan and this additional \$1 million loan will be subordinate to an amortized first trust deed permanent loan of \$1,305,864. OCCRR intends to fund the \$500,000 and \$1 million loans at construction closing and convert the loan at permanent loan closing. OCCRR intends to close on the \$1,532,983 loan at construction closing but fund the loan at permanent loan closing. OCCRR is requesting authorization to subordinate to additional senior debt, up to 100 percent of the cumulative loan-to-value, based on the as-built appraised market value, and if necessary, on any future changes in project financing. OCCRR will calculate the senior debt plus the County loan and subtract the total from the current (within last six months) as-built appraised market value. By doing so, it will determine the maximum additional senior debt to which County will subordinate its loan. If the current as-built appraised market value exceeds the cumulative senior debt plus the County loan, the County may subordinate to additional senior debt, if necessary, for the viability of the project.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and therefore is not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since it is for the approval of additional County loan commitment and subordination of the new and previously approved County loans for construction and permanent financing to help facilitate long-term financing needs for the Riviera Motel and allow the County of Orange to continue to support the production of supportive housing in Orange County. Therefore, this proposed activity is not subject to

CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA.

Compliance with NEPA: Per 24 CFR Part 58, an Environmental Assessment of the project was completed and the Authority to Use Grant Funds was issued by the U.S. Department of Housing and Urban Development on May 21, 2022, for HOME funds and on May 23, 2022, for Project-Based Vouchers. Additionally, pursuant to the U.S. Department of Treasury Interim Final Rule Frequently Asked Questions for SLFRF Program, the National Environmental Policy Act (NEPA) does not apply to Treasury's administration of the SLFRF program, and therefore does not apply to the proposed action. Should any future action connected to this approval be funded by a federal financial assistance program other than SLFRF, the grant funds identified above, or Project-Based Vouchers, identified above, or require another federal approval, that action will be reviewed for compliance with NEPA.

FINANCIAL IMPACT:

This loan will only affect the notes receivable balance sheet accounts of the fund. Per budgeting practice, the loan is not built into the fiscal year appropriations budget process. The \$1 million loan increase and the previous \$500,000 loan, to be funded at construction loan closing anticipated in November 2022 (Fiscal Year 2022-23), and increase to the 2020 NOFA of \$1 million will be funded with 100 percent Southern California Home Financing Authority, American Rescue Plan Act (ARPA) Coronavirus State and Local Fiscal Recovery Funds (ARPA-SLFRF) Revenue Loss, Community Development Block Grant-Corona Virus (subject to Substantial Amendment approval) and/or HOME Investment Partnerships Program funding in OC Housing Fund 15G, Housing Asset Fund 170, OC Housing Authority Operating Reserves Fund 117, CEO Single Family Housing Fund 15B, Real Estate Development Program Fund 135 and/or Mental Health Services Act Fund 12A. The previously approved \$1,532,983 in Mental Health Services Act (or other dedicated housing funds including, but not limited to, Housing Successor and Federal HOME funds) will be funded upon issuance of the Certificate of Occupancy anticipated in Fiscal Year 2023-24).

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

Health Care Agency

ATTACHMENT(S):

Attachment A – California Code of Regulations Title 14 Section 15378

Attachment B – Code of Federal Regulations Title 24 Subtitle A Part 58

Attachment C – Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions



Cal. Code Regs. tit. 14 § 15378

Section 15378 - Project

- (a)** "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
- (1)** An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100- 65700.
 - (2)** An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (3)** An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- (b)** Project does not include:
- (1)** Proposals for legislation to be enacted by the State Legislature;
 - (2)** Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);
 - (3)** The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative. (Steinv.City of Santa Monica, (1980) 110 Cal. App. 3d 458;Friends of Sierra Madre v. City of Sierra Madre(2001) 25 Cal.4th 165);
 - (4)** The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.
 - (5)** Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.
- (c)** The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.
- (d)** Where the lead agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivisions (a)(2) or (a)(3), the lead agency shall

describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

Cal. Code Regs. Tit. 14, § 15378

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code; Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District, (1992) 9 Cal.App.4th 464; and Fullerton Joint Union High School District v. State Board of Education, (1982) 32 Cal.3d 779; Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County (1975) 51 Cal.App.3d 648; and Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98.

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of Note filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
 2. Amendment of subsection (a) and Note filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
 3. Amendment of subsections (b)(1)-(5) and amendment of Note filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
 4. Change without regulatory effect repealing subsection (b)(5) and amending Note filed 7-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
 5. Amendment of subsection (b)(3) and new subsection (b)(5) filed 9-7-2004; operative 9-7-2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
 6. Change without regulatory effect amending subsection (d) and Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
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Title 24 - Housing and Urban Development

Subtitle A

- Office of the Secretary, Department of Housing and Urban Development

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- ▼ **Subpart F** Environmental Review Process: 58.52 – 58.53
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 - § 58.71 Request for release of funds and certification.
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 - § 58.74 Time for objecting.
 - § 58.75 Permissible bases for objections.
 - § 58.76 Procedure for objections.
 - § 58.77 Effect of approval of certification.

This content is from the eCFR and is authoritative but unofficial.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental

Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Part 58 Environmental Review Procedures for Entities Assuming HUD

Environmental Responsibilities

Subpart A Purpose, Legal Authority, Federal Laws and Authorities

- § 58.1 Purpose and applicability.
- § 58.2 Terms, abbreviations and definitions.
- § 58.4 Assumption authority.
- § 58.5 Related Federal laws and authorities.
- § 58.6 Other requirements.

Subpart A - Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose and applicability.

- (a) **Purpose.** This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.
- (b) **Applicability.** This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:
 - (1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));
 - (2) [Reserved]
 - (3)
 - (i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

- (ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);
- (4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);
- (5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));
- (6)
 - (i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);
 - (ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and
 - (iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);
- (7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading "Annual Contributions for Assisted Housing" in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);
- (8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);
- (9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m));
- (10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:
 - (i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and
 - (ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);
- (11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

- (12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).
- (c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.
- (d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

§ 58.2 Terms, abbreviations and definitions.

- (a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:
- (1) **Activity** means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.
- (2) **Certifying Officer** means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.
- (3) **Extraordinary Circumstances** means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:
- (i) Actions that are unique or without precedent;
 - (ii) Actions that are substantially similar to those that normally require an EIS;
 - (iii) Actions that are likely to alter existing HUD policy or HUD mandates; or
 - (iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.
- (4) **Project** means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.
- (5) **Recipient** means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(b):

- (i) A State that does not distribute HUD assistance under the program to a unit of general local government;
 - (ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;
 - (iii) A unit of general local government;
 - (iv) An Indian tribe;
 - (v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under § 58.1(b)(6)(ii) or Section 8 assistance under § 58.1(b)(6)(iii), a public housing agency;
 - (vi) Any direct grantee of HUD for a special project under § 58.1(b)(7);
 - (vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;
 - (viii) With respect to the Self-Help Homeownership Opportunity Program under § 58.1(b)(9), any direct grantee of HUD.
 - (ix)
 - (A) With respect to NAHASDA assistance under § 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and
 - (B) With respect to the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), the Indian tribe.
 - (x) With respect to the Shelter Plus Care and Supportive Housing Programs under § 58.1(b)(3)(ii), nonprofit organizations and other entities.
- (6) **Release of funds.** In the case of the FHA Multifamily Housing Finance Agency Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.
- (7) **Responsible Entity.** Responsible Entity means:
- (i) With respect to environmental responsibilities under programs listed in § 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.
 - (ii) With respect to environmental responsibilities under the programs listed in § 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in § 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in § 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:
 - (A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

- (B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
 - (C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
- (8) **Unit Density** refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.
- (9) **Tiering** means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.
- (10) **Vacant Building** means a habitable structure that has been vacant for more than one year.
- (b) The following abbreviations are used throughout this part:
- (1) CDBG - Community Development Block Grant;
 - (2) CEQ - Council on Environmental Quality;
 - (3) EA - Environmental Assessment;
 - (4) EIS - Environmental Impact Statement;
 - (5) EPA - Environmental Protection Agency;
 - (6) ERR - Environmental Review Record;
 - (7) FONSI - Finding of No Significant Impact;
 - (8) HUD - Department of Housing and Urban Development;
 - (9) NAHA - Cranston-Gonzalez National Affordable Housing Act of 1990;
 - (10) NEPA - National Environmental Policy Act of 1969, as amended;
 - (11) NOI/EIS - Notice of Intent to Prepare an EIS;
 - (12) NOI/RROF - Notice of Intent to Request Release of Funds;
 - (13) ROD - Record of Decision;
 - (14) ROF - Release of Funds; and
 - (15) RROF - Request for Release of Funds.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.4 Assumption authority.

- (a) **Assumption authority for responsible entities: General.** Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution

of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) **Particular responsibilities of the States.**

- (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.
- (2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

- (c) **Particular responsibilities of Indian tribes.** An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) **Historic properties.**

- (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).
- (3) Federal historic preservation regulations as follows:
 - (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and
 - (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) **Floodplain management and wetland protection.**

- (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)
- (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

(c) **Coastal Zone Management.** The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) **Sole source aquifers.**

- (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).
- (2) Sole Source Aquifers (Environmental Protection Agency - 40 CFR part 149).

(e) **Endangered species.** The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) **Wild and scenic rivers.** The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) **Air quality.**

- (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency - 40 CFR parts 6, 51, and 93).

(h) **Farmlands protection.**

- (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).
- (2) Farmland Protection Policy (Department of Agriculture - 7 CFR part 658).

(i) **HUD environmental standards.**

- (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3).

(2)

(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

- (iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.
- (iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.
- (j) **Environmental justice.** Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(12) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).

(a)

- (1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
 - (i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and
 - (ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
- (2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.
- (3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.
- (4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

- (b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:
 - (1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and
 - (2) The person failed to obtain and maintain flood insurance.
- (c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.
- (d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

This content is from the eCFR and is authoritative but unofficial.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.
Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart B General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

§ 58.11 Legal capacity and performance.

§ 58.12 Technical and administrative capacity.

§ 58.13 Responsibilities of the certifying officer.

§ 58.14 Interaction with State, Federal and non-Federal entities.

§ 58.15 Tiering.

§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

Subpart B - General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

§ 58.11 Legal capacity and performance.

- (a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.
- (b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.
- (c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

- (d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5. The Certifying Officer must also:

- (a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and
- (b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar. 30, 1998]

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site

specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

- (a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:
 - (1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.
 - (2) Receive public notices, RROFs, and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.
- (b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

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Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental

Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart C General Policy: Environmental Review Procedures

§ 58.21 Time periods.

§ 58.22 Limitations on activities pending clearance.

§ 58.23 Financial assistance for environmental review.

Subpart C - General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

- (a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.
- (b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.
- (c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.
- (d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in

accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

- (e) **Self-Help Homeownership Opportunity Program (SHOP).** In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.
- (f) **Relocation.** Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

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Title 24 - Housing and Urban Development

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart D Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

§ 58.32 Project aggregation.

§ 58.33 Emergencies.

§ 58.34 Exempt activities.

§ 58.35 Categorical exclusions.

§ 58.36 Environmental assessments.

§ 58.37 Environmental impact statement determinations.

§ 58.38 Environmental review record.

Subpart D - Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

- (a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.
- (b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

- (a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.
- (b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a

combination of water, sewer and street improvements and economic development activities); or a *combination of aggregation approaches*, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

- (c) The purpose of project aggregation is to group together related activities so that the responsible entity can:
 - (1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).
 - (2) Consider reasonable alternative courses of action.
 - (3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.
 - (4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.
- (d) **Multi-year project aggregation -**
 - (1) **Release of funds.** When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.
 - (2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

- (a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.
- (b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.34 Exempt activities.

- (a) Except for the applicable requirements of § 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:
- (1) Environmental and other studies, resource identification and the development of plans and strategies;
 - (2) Information and financial services;
 - (3) Administrative and management activities;
 - (4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
 - (5) Inspections and testing of properties for hazards or defects;
 - (6) Purchase of insurance;
 - (7) Purchase of tools;
 - (8) Engineering or design costs;
 - (9) Technical assistance and training;
 - (10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;
 - (11) Payment of principal and interest on loans made or obligations guaranteed by HUD;
 - (12) Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.
- (b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

- (a) **Categorical exclusions subject to § 58.5.** The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

- (1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- (2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- (3) Rehabilitation of buildings and improvements when the following conditions are met:
 - (i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;
 - (ii) In the case of multifamily residential buildings:
 - (A) Unit density is not changed more than 20 percent;
 - (B) The project does not involve changes in land use from residential to non-residential; and
 - (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:
 - (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- (4)
 - (i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
 - (ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
 - (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).
- (5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- (6) Combinations of the above activities.
- (b) **Categorical exclusions not subject to § 58.5.** The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no

further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

- (1) Tenant-based rental assistance;
 - (2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
 - (3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
 - (4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
 - (5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.
 - (6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
 - (7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.
- (c) **Circumstances requiring NEPA review.** If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.
- (d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

- (a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.
- (b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

- (1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
 - (2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.
 - (3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.
- (c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.
- (d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where § 58.53 is applicable.
- (e) **Recommended EIS Format.** The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as necessary to meet specific program needs.

- (a) **ERR Documents.** The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:
- (1) Describe the project and the activities that the recipient has determined to be part of the project;
 - (2) Evaluate the effects of the project or the activities on the human environment;
 - (3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and
 - (4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).
- (b) **Other documents and information.** The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for

inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

This content is from the eCFR and is authoritative but unofficial.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental

Responsibilities

Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart E Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

§ 58.45 Public comment periods.

§ 58.46 Time delays for exceptional circumstances.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

Subpart E - Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

- (a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.
- (b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
- (c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 and § 58.6.
- (d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
- (e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
- (f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.
- (g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

- (1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to § 58.43.
- (2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

- (a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.
- (b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by § 58.70. If the notices are released as a combined notice, the combined notice shall:
 - (1) Clearly indicate that it is intended to meet two separate procedural requirements; and
 - (2) Advise the public to specify in their comments which "notice" their comments address.
- (c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI)	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF)	7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices	15 days when published or, if no publication, 18 days when mailing and posting

[68 FR 56130, Sept. 29, 2003]

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

- (a) There is a considerable interest or controversy concerning the project;
- (b) The proposed project is similar to other projects that normally require the preparation of an EIS; or
- (c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

- (a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:
 - (1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
 - (2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
 - (3) The recipient proposes the selection of an alternative not in the original finding.
- (b)
 - (1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.
 - (2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.
 - (3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart F Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

§ 58.53 Use of prior environmental impact statements.

Subpart F - Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

- (a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:
 - (1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;
 - (2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

- (3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;
 - (4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.
- (b) The prior final EIS has been filed within five (5) years, and updated as follows:
- (1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;
 - (2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.
- (c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart G Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

§ 58.56 Scoping process.

§ 58.57 Lead agency designation.

§ 58.59 Public hearings and meetings.

§ 58.60 Preparation and filing of environmental impact statements.

Subpart G - Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

(a) **Factors to consider.** In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

- (2) The degree of interest in or controversy concerning the project.
 - (3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.
 - (4) The extent to which public involvement has been achieved through other means.
- (b) **Procedure.** All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:
- (1) State the date, time, place, and purpose of the hearing or meeting.
 - (2) Describe the project, its estimated costs, and the project area.
 - (3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.
 - (4) State the responsible entity's name and address and the name and address of its Certifying Officer.
 - (5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Preparation and filing of environmental impact statements.

- (a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.
- (b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:
 - (1) Five copies to EPA Headquarters;
 - (2) Five copies to EPA Regional Office;
 - (3) Copies made available in the responsible entity's and the recipient's office;
 - (4) Copies or summaries made available to persons who request them; and
 - (5) FEIS only - one copy to State, HUD Field Office, and HUD Headquarters library.
- (c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.
- (d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.
- (e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

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Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart H Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

§ 58.71 Request for release of funds and certification.

§ 58.72 HUD or State actions on RROFs and certifications.

§ 58.73 Objections to release of funds.

§ 58.74 Time for objecting.

§ 58.75 Permissible bases for objections.

§ 58.76 Procedure for objections.

§ 58.77 Effect of approval of certification.

Subpart H - Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by [§ 58.43](#) and [§ 58.45](#) before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

- (a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in [paragraph \(b\)](#) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in [§ 58.1\(b\)](#). The RROF and certification must be in a form specified by HUD.
- (b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in [§ 58.10](#), the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity

to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

- (c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

- (a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.
- (b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.
- (c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

- (a) The certification was not in fact executed by the responsible entity's Certifying Officer.

- (b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.
- (c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.
- (d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.
- (e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).
- (f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

- (a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.
- (b) Be dated when signed.
- (c) Describe the basis for objection and the facts or legal authority supporting the objection.
- (d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

- (a) **Responsibilities of HUD and States.** HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).
- (b) **Public and agency redress.** Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.
- (c) **Implementation of environmental review decisions.** Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.
- (d) **Responsibility for monitoring and training.**

- (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:
 - (i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;
 - (ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;
 - (iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;
 - (iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;
 - (v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.
- (2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

Coronavirus State and Local Fiscal Recovery Funds

Final Rule: Frequently Asked Questions

This document contains answers to frequently asked questions regarding the Final Rule of the Coronavirus State and Local Fiscal Recovery Funds (SLFRF, or Fiscal Recovery Funds). The final rule became effective on April 1, 2022. Treasury intends to update this document periodically in response to questions received from stakeholders. Recipients and stakeholders should consult the [final rule](#) for additional information, as this document does not describe all relevant requirements that apply to the SLFRF program. Recipients also may find helpful the [Overview of the Final Rule](#), which provides a summary of major provisions of the final rule for informational purposes.

- For overall information about the program, including information on requesting funding, please see <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments>
- For general questions about SLFRF, please email SLFRF@treasury.gov.

Answers to frequently asked questions on distribution of funds to non-entitlement units of local government (NEUs) can be found in this [FAQ supplement](#).

Answers to frequently asked questions on the taxability and reporting of payments from SLFRF can be found in this [FAQ issued by the IRS](#).

The FAQs in this document are applicable to the final rule, although readers will notice that many have been incorporated from the FAQs that were available in connection with the interim final rule, because they remain applicable. Answers to frequently asked questions that are unique to the interim final rule remain available at [Interim Final Rule: Frequently Asked Questions](#). A categorization is provided on the following page to assist in identifying the FAQs that remain largely the same as in the FAQ document associated with the interim final rule and the FAQs that are new or have been updated in conformity with the final rule.

Throughout these FAQs, Treasury may refer readers to relevant sections of the Overview of the Final Rule. The Overview of the Final Rule provides a summary of major provisions of the final rule for informational purposes and is intended as a brief, simplified user guide to the final rule provisions. The descriptions provided in the Overview summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF funds, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.

FAQ Categorization

Version	Date	Category	FAQ #
1.0	April 27, 2022	FAQs retained with slight modifications from the Interim Final Rule: Frequently Asked Questions document (please note that FAQ numbering has changed between the two documents)	#1.1 – #1.2, #1.4 – 1.7, #2.10, #2.12 – #2.13, #3.8 – #3.13, #4.3, #4.5, #6.10 – #6.11, #6.14, #8.1, #8.3, #10.1 – #10.2, #11.1 – 11.3, #11.6 – 11.12, #12.1 – 12.2
1.0	April 27, 2022	New or Substantially Updated FAQs	#1.3, #1.8, #2.1 – #2.9, #2.11, #2.14 – #2.24, #3.1 – 3.7, #3.14, #4.1 – #4.2, #4.4, #4.6, #4.7 – #4.10, #5.1 – #5.4, #6.1 – #6.9, #6.12 – #6.13, #6.15 – #6.16, #8.2, #11.4 – #11.5, Section 13
2.0	July 27, 2022	Updated FAQs	#2.14, #3.1, #4.9
2.0	July 27, 2022	New FAQs	#6.17 - #6.20, #13.13 - #13.17

1. Eligibility and Allocations

1.1. Which governments are eligible for funds?

The following governments are eligible:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities
- Non-entitlement units, or smaller local governments

1.2. Which governments receive funds directly from Treasury?

Treasury distributes funds directly to each eligible state, territory, metropolitan city, county, or Tribal government. Smaller local governments that are classified as non-entitlement units receive funds through their applicable state government.

1.3. Are special-purpose units of government eligible to receive funds?

Special-purpose units of local government are not eligible to receive an award as a recipient under the SLFRF program; however, a state, territory, local, or Tribal government may transfer funds to a special-purpose unit of government to carry out a program or project on its behalf as a subrecipient. Special-purpose districts perform specific functions in the community, such as fire, water, sewer or mosquito abatement districts. A recipient can also provide funds to an entity that is special-purpose government for the purpose of directly benefitting the entity as a result of the entity experiencing a public health impact or negative economic impact of the pandemic.

1.4. How are funds being allocated to Tribal governments, and how will Tribal governments find out their allocation amounts?

\$20 billion of Fiscal Recovery Funds was reserved for Tribal governments. The American Rescue Plan Act specified that \$1 billion would be allocated evenly to all eligible Tribal governments. The remaining \$19 billion was to be distributed using an allocation methodology determined by Treasury, which was based on enrollment and employment.

There were two payments to Tribal governments. Each Tribal government's first payment included (i) an amount in respect of the \$1 billion allocation that was to be divided equally among eligible Tribal governments and (ii) each Tribal government's pro rata share of the Enrollment Allocation. Tribal governments were notified of their allocation amount and delivery of payment 4-5 days after completing request for funds in the Treasury Submission Portal. The deadline to make the initial request for funds was June 21, 2021.

The second payment included a Tribal government's pro rata share of the Employment Allocation. There was a \$1,000,000 minimum employment allocation for Tribal governments. In late June 2021, Tribal governments received an email notification to re-enter the Treasury Submission Portal to confirm or amend their 2019 employment numbers that were submitted to Treasury for the CARES Act's Coronavirus Relief Fund. To receive an Employment Allocation, including the minimum employment allocation, Tribal governments must have confirmed employment numbers by July 23, 2021. Treasury calculated employment allocations for those Tribal governments that confirmed or submitted amended employment numbers by the deadline. In August, Treasury communicated to Tribal governments the amount of their portion of the Employment Allocation and the anticipated date for the second payment.

1.5. My county is a unit of general local government with population under 50,000. Will my county receive funds directly from Treasury?

Yes. All counties that are units of general local government receive funds directly from Treasury and should apply via the [online portal](#). The list of county allocations is available [here](#).

1.6. My local government expected to be classified as a non-entitlement unit. Instead, it was classified as a metropolitan city. Why?

The American Rescue Plan Act (ARPA) defines, for purposes of the Coronavirus Local Fiscal Recovery Fund (CLFRF), metropolitan cities to include those that are currently metropolitan cities under the Community Development Block Grant (CDBG) program but also those cities that relinquish or defer their status as a metropolitan city for purposes of the CDBG program. This would include, by way of example, cities that are principal cities of their metropolitan statistical area, even if their population is less than 50,000. In other words, a city that is eligible to be a metropolitan city under the CDBG program is eligible as a metropolitan city under the CLFRF, regardless of how that city has elected to participate in the CDBG program.

Unofficial allocation estimates produced by other organizations may have classified certain local governments as non-entitlement units of local government. However, based on the statutory definitions, some of these local governments should have been classified as metropolitan cities.

1.7. In order to receive and use funds, must a recipient government maintain a declaration of emergency relating to COVID-19?

No. Neither the statute establishing the SLFRF nor the final rule requires recipients to maintain a local declaration of emergency relating to COVID-19.

1.8. Can nonprofit or private organizations receive funds? If so, how?

Yes. Under section 602(c)(3) of the Social Security Act, a State, territory, or Tribal

government may transfer funds to a “private nonprofit organization . . . , a Tribal organization . . . , a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations). The interim final rule clarified that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive, and the final rule clarified that recipients may transfer funds to any entity to carry out, as a subrecipient, an eligible activity on behalf of the SLFRF recipient (transferor), as long as they comply with the SLFRF Award Terms and Conditions and other applicable requirements. A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be considered a subrecipient and will be expected to comply with all subrecipient reporting requirements.

Additionally, a recipient can provide funds to an entity, including a nonprofit organization, for the purpose of directly benefitting the entity as a result of the entity experiencing a public health impact or negative economic impact of the pandemic. In this instance, these entities will be considered beneficiaries, not subrecipients, and will not be expected to comply with subrecipient reporting requirements. Beneficiary reporting requirements will apply.

The ARPA does not authorize Treasury to provide SLFRF funds directly to nonprofit or private organizations. Thus, a nonprofit or private organization should seek funds from SLFRF recipient(s) in their jurisdiction (e.g., a State, local, territorial, or Tribal government).

2. Eligible Uses – Responding to the Public Health Emergency / Negative Economic Impacts

2.1. If a use of funds is not explicitly permitted in the final rule as a response to the public health emergency and its negative economic impacts, does that mean it is prohibited?

No. The final rule provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. The final rule also presumes that some populations experienced pandemic impacts and are eligible for responsive services. Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or “classes” of beneficiaries that experienced pandemic impacts and provide services to those classes.

2.2. What types of services are eligible as responses to the negative economic impacts of the pandemic?

Eligible uses to respond to the negative economic impacts of the pandemic include assistance to households and communities; assistance to small businesses and nonprofits; aid to impacted industries; and uses to support public sector capacity and workforce. For

an overview of the eligible uses within each of these subcategories, please see pages 12-13 and 16-34 of the [Overview of the Final Rule](#). The eligible uses within this category include programs and services to respond to impacts of the pandemic on households and communities, such as:

- Cash assistance
- Food assistance (e.g., child nutrition programs, including school meals) & food banks
- Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- Programs or services to support long-term housing security, including development of affordable housing and permanent supportive housing

They also include uses to bolster public sector capacity and workforce, such as:

- Payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19.
- Payroll and covered benefits for additional public sector workers up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

These tools can allow recipients not only to bring back laid-off workers, but to address critical shortages of teachers, instructional aides, transportation workers, behavioral health workers, and other key government personnel, by funding positions at competitive wages and improving job quality in these sectors (see FAQs [#2.15](#), [#2.16](#), [#2.17](#)).

Recipients also have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses. For more information on identifying eligible uses beyond those enumerated, please see pages 32-34 of the Overview of the Final Rule.

2.3. What types of COVID-19 response, mitigation, and prevention activities are eligible?

Please see pages 12-14 of the [Overview of the Final Rule](#) for a non-exhaustive list of enumerated eligible uses relating to COVID-19 mitigation and prevention, as well as information about how to design other responses that are not included in the list.

2.4. May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households?

Yes. Cash transfers, like all eligible uses in the public health and negative economic impacts category, must respond to the negative economic impacts of the pandemic on a household or class of households. Recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic. Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm. Please also see questions 7-10 from the [IRS-issued FAQ](#) on SLFRF relating to the taxability of cash transfers.

2.5. May recipients use funds to respond to the public health emergency and its negative economic impacts by replenishing unemployment funds?

Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances.

Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits

payable (i.e., maximum benefit entitlement).

2.6. May funds be used to reimburse recipients for costs incurred by state, local and Tribal governments in responding to the public health emergency and its negative economic impacts prior to passage of the American Rescue Plan?

Use of SLFRF is generally forward looking. The final rule permits funds to be used to cover costs incurred beginning on March 3, 2021.

2.7. May recipients use funds for general economic development?

Generally, no. General economic development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction’s business climate – would generally not be eligible under this eligible use category.

To identify an eligible use of funds under the public health and negative economic impacts category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact. For example, job training and other supports – like childcare, transportation, and subsidized employment – for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

2.8. How can recipients use funds to assist the travel, tourism, and hospitality industries? May recipients use funds to assist impacted industries other than travel, tourism, and hospitality?

Please see pages 24-25 of the [Overview of the Final Rule](#).

2.9. How does the final rule help address the disparate impact of COVID-19 on certain populations and geographies?

In recognition of the long-standing disparities in health and economic outcomes in underserved communities that have amplified and exacerbated the impacts of the pandemic, the final rule identifies certain populations as “disproportionately impacted” by the pandemic and enumerates a broad range of services and programs to address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or assistance relocating to areas of greater economic opportunity, and other eligible uses to respond to negative economic impacts in disproportionately impacted communities.

Specifically, Treasury will presume that certain populations were disproportionately impacted by the pandemic and therefore automatically eligible to receive responsive services. See page 19 of the [Overview of the Final Rule](#) for a full list of the

populations presumed disproportionately impacted by the pandemic. Recipients may also provide responsive services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served.

Treasury has provided a non-exhaustive list of eligible responses to serve disproportionately impacted communities on page 20 of the [Overview of the Final Rule](#). Note that these are an enhanced set of responses available in addition to responses available to respond to impacts of the pandemic on households and communities (including those listed on page 18 of the Overview).

2.10. May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?

Yes. Under the final rule, recipients may use SLFRF funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs.

Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

2.11. How can recipients use funds to support workers returning to work?

Under the final rule, recipients may use SLFRF funds under the public health and negative economic impacts eligible use category to provide assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, cash and other incentives for newly employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses, and development of job and workforce training centers.

2.12. What staff are included in “public safety, public health, health care, human services, and similar employees”? Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff?

As discussed in the final rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee’s time that is dedicated to responding to the COVID-19 public health emergency.

Public safety employees would include police officers (including state police officers),

sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.

2.13. May recipients use funds to establish a public jobs program?

Yes. Under the public health and negative economic impacts eligible use category, the final rule permits a broad range of services to unemployed or underemployed workers and other individuals that suffered negative economic impacts from the pandemic. That can include public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training. The broad range of permitted services can also include other employment supports, such as childcare assistance or assistance with transportation to and from a jobsite or interview.

2.14. Can funds be used for investments in affordable housing?

Yes. Under the final rule, "Development, repair, and operation of affordable housing and services or programs to increase long-term housing security" is an enumerated eligible use to respond to impacts of the pandemic on households and communities. Treasury continues to strongly encourage the use of SLFRF for affordable housing and has updated this FAQ to promote clarity and administrability in the use of these funds.

Affordable housing projects must be responsive and proportional to the harm identified. This standard may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for households that experienced associated pandemic impacts under the final rule.

Presumptively Eligible Uses

For purposes of this standard, if a project fits within either of the below presumptions, Treasury will presume that a project is eligible. As discussed more below, Treasury will presume that the following affordable housing investments are eligible uses of SLFRF funds as responses to the negative economic impacts of the pandemic: (1) projects that would be eligible for funding under an expanded list of federal housing programs and (2) projects for the development, repair, or operation of affordable rental housing with certain income and affordability requirements. Recipients' affordable housing projects may use

either of these presumptions to qualify as a presumptively eligible use. If a recipient uses one presumption for an affordable housing project, the recipient may still use a different presumption for another affordable housing project.

Presumption 1: Treasury will presume that any project that is eligible to be funded under any of the following federal housing programs is an eligible use of SLFRF funds as a response to the negative economic impacts of the pandemic:

- The National Housing Trust Fund (HTF, administered by HUD);
- The Home Investment Partnerships Program (HOME, administered by HUD);
- The Low-Income Housing Tax Credit (administered by Treasury);
- The Public Housing Capital Fund (administered by HUD);
- Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disabilities Program (administered by HUD);
- Project-Based Rental Assistance (PBRA) (administered by HUD); and
- Multifamily Preservation & Revitalization program (administered by USDA).

In previous guidance, presumptive eligibility for affordable housing projects was limited to HOME and HTF. Treasury has updated this list by adding additional programs in an effort to increase administrability and clarity in the use of SLFRF funds for affordable housing purposes. This update is also expected to decrease the transaction costs associated with layering SLFRF funds with existing projects. Note that these programs use different income limits than the definitions of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF funds if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program.

To the extent that a recipient chooses to use SLFRF funds to invest in affordable housing projects in alignment with these federal housing programs, the investment agreement must require the covered project or units to adhere to all applicable local codes, and comply, at a minimum, with the applicable federal housing program's requirements related to:

- Resident income restrictions;
- The period of affordability and related covenant requirements for assisted units;
- Tenant protections; and
- Housing quality standards.

Presumption 2: Treasury will presume that an investment in the development, repair, or

operation of any affordable rental housing unit is an eligible use of SLFRF funds to respond to the negative economic impacts of the pandemic if the unit has a limited maximum income of 65% area median income (AMI), as imposed through a covenant, land use restriction agreement, or other enforceable legal requirement for a period of at least 20 years. A jurisdiction may establish a longer period of affordability at its discretion. This presumption is available even if the project does not align with the federal housing programs specified in Presumption 1.

Under this presumption, recipients may use SLFRF funds as part of the financing for a mixed-income housing project if the total financing made up of SLFRF funds does not exceed the total development costs attributable to affordable housing units limited to households at or below 65% AMI for the affordability period. For example, if 25% of a project's units are reserved for families at or below 65% AMI for the affordability period, and 20% of the total development costs of the project are attributable to such reserved units, then SLFRF funds may be used to pay for up to 20% of the total development costs.

The income limit and 20-year affordability covenant does not need to apply to specific units, but rather it may specify a number of units within the development, in which case the covenant should also specify the bedroom size mix.

Using 65% AMI as the income limit aligns to the AMI component of Treasury's definition of moderate-income households, which is one population that Treasury presumes impacted by the pandemic or its negative economic impacts. Because of the highly localized nature of housing costs and the broad use of AMI in affordable housing development, repair, and operation, Presumption 2 requires funded units to be at or below 65% AMI but does not incorporate the 300% FPL level that is also used to define moderate-income households under the final rule.

Recipients are strongly encouraged to prioritize SLFRF investments for affordable housing in close proximity to, or with strong transit linkages to, centers of employment and/or institutions that provide high quality education or childcare, health care, services and healthy foods.

Additional Eligible Uses:

Note that other affordable housing projects, beyond those eligible under the presumptions described above, may also be eligible uses of SLFRF funds under the final rule if they are related and are reasonably proportional to addressing the negative economic impacts of the pandemic and otherwise meet the final rule's requirements. As an example, in certain rental markets, data indicates that there are gaps in financing for units serving households between 50% and 80% AMI and/or significantly higher than average housing costs relative to AMI that have led communities in this income threshold to be impacted by the pandemic. In such cases, it may be reasonably proportional to address the negative economic impacts of the pandemic by funding units (e.g., up to 80% AMI) that do not fall into the presumptively eligible categories listed above.

To further support sustainable and durable homeownership, recipients may consider

offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

2.15. Can I use funds to raise public sector wages and hire public sector workers?

Yes. Under the increased flexibility of the final rule, SLFRF funding may be used to support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, including reasonable increases in compensation, and paying for ancillary administrative costs related to hiring, support, and retention.

Under the set of eligible uses for public-sector rehiring, recipients may fill vacancies and add additional employees using SLFRF funds (see pages 4385-4387 of the final rule and pages 27-28 of the [Overview of the Final Rule](#)). Recipients have two options to restore pre-pandemic employment, depending on the recipient's needs. First, if the recipient simply wants to hire back employees for pre-pandemic positions, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.

Second, if the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions, recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Filling these roles may require recipients to increase wages and improve benefits above and beyond what they currently offer, especially in roles with historically low wages and acute staffing needs. This compensation would be an eligible use of SLFRF funds.

SLFRF funds also may be used to provide worker retention incentives, including reasonable increases in compensation to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.

2.16. How can funds be used to improve job quality and address labor supply challenges in the education and childcare sectors?

SLFRF funds can pay for the full salary and benefits of many school and childcare staff, including increased wages needed to recruit and retain excellent staff, and to fund premium pay, bonuses, training, and other worker supports. Some examples of potential uses of funds related to supporting the education and childcare sectors are provided below:

- Under the public health and negative economic impacts eligible use category, SLFRF funds can be used broadly for re-hiring public sector staff, such as school staff, to restore the public sector, including payroll and covered benefits for new or re-hired public employees (see [FAQ #2.15](#))
 - Even where the recipient, such as the municipality, does not have budgetary authority over a school district, it may choose to sub-award SLFRF funds to districts and other government entities for these purposes (see [FAQ #2.17](#)).
- SLFRF can fund premium pay for essential workers, including school personnel and childcare providers working in person in both the public and private sector, to compensate them for their service during the pandemic (see pages 35-36 of the [Overview of the Final Rule](#) and [section 5 of the FAQs](#)).
- Under the public health and negative economic impacts eligible use category, SLFRF can fund supports for unemployed and underemployed workers, including hiring bonuses, training, and other labor supports, regardless of sector (see [FAQ #2.11](#)).
 - Under this provision, recipients can help childcare providers and school districts by strengthening pipelines into these sectors, including by using SLFRF funds to train potential workers to fill in-demand roles in childcare and education, including as school bus drivers, school nutrition staff, paraprofessionals, and other staff.
- Childcare subsidies and other supports for childcare programs – public or private – that serve low- and moderate-income families, are broadly eligible uses of SLFRF funding under the public health and negative economic impacts eligible use category (see [FAQ #2.25](#)). These subsidies can support improvements to wages and job quality that make childcare employment an attractive career.
- Recipients can also provide assistance to small businesses under the public health and negative economic impacts eligible use category – which many state and local governments can use to help childcare small businesses expand their business, raise wages for workers, and complete training and other technical assistance to support high-quality care, given the impacts these businesses have faced over the course of the pandemic (see pages 21-22 of the [Overview](#)).

2.17. How can recipients use funds to invest in their public sector workforce when the recipient government is not the direct employer, as is the case with some transit agencies and local educational agencies?

Under the increased flexibility of the final rule, SLFRF funds may be used to support a broader set of uses to restore and support public sector employment as a response to the pandemic and its negative economic impacts (see [FAQ #2.15](#)).

Treasury acknowledges that funding models for public sector workers vary drastically across jurisdictions, and the direct employer of a public sector worker may be an entity separate from the SLFRF recipient government, like an independent transit agency or local educational agency (LEA), rather than the recipient government itself. Recipients may still use SLFRF funds to hire workers in these sectors under such circumstances.

Using the calculation detailed on page 4386 of the final rule and pages 27-28 of the [Overview of the Final Rule](#), a recipient may calculate at an entity level the actual number of FTEs for the entity and the adjusted pre-pandemic baseline for the entity. The difference between the actual number of FTEs and the adjusted pre-pandemic baseline represents the number of FTEs that can be hired using SLFRF funds.

A recipient may then transfer funds to the entity, which would act as a subrecipient and cover payroll, covered benefits, and other costs associated with hiring up to this number of FTEs. A recipient may, in addition, “transfer” the FTEs it may hire based on its own calculation to the entity. A recipient may not, however, perform the calculation on the behalf of an entity, and then “transfer” to itself, or to any other entity, any of the FTEs able to be hired by the entity.

As an illustrative example, consider a recipient county government that would like to fund the salary and benefits costs for hiring teachers in a school district.

The school district has 2000 budgeted FTEs on January 27, 2020. The school district’s pre-pandemic baseline is 2000 FTEs; its adjusted pre-pandemic baseline is $2000 * 1.075 = 2150$ FTEs. The county’s pre-pandemic baseline is 1000 FTEs; its adjusted pre-pandemic baseline is $1000 * 1.075 = 1075$ FTEs. Now, assume that on March 3, 2021, the school district had 1800 budgeted FTEs in total, and the county had 1000 budgeted FTEs.

The county would be able to transfer funds to the school district to hire up to 350 FTEs with SLFRF funds (that is, $2150 - 1800 = 350$ FTEs), and additionally, “transfer” up to 75 FTEs to the school district (that is, $1075 - 1000 = 75$ FTEs). If the county decided to “transfer” all of its 75 FTEs to the school district, then the school district could hire up to $350 + 75 = 425$ FTEs using funds from the county. However, the county may not directly hire any more than 75 FTEs under this public sector hiring provision, and may not use any of the funds for the 350 FTEs able to be hired by the school district to fund any of the county’s FTE positions.

This public sector rehiring provision is a powerful tool for addressing staffing needs and shortages across government.

2.18. Can I use SLFRF funds to provide childcare to households?

Yes. Childcare and early learning services, home visiting programs, services for child welfare involved families and foster youth are an enumerated use eligible to respond to impacts of the pandemic on households and communities. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities. Further, improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures, subject to the other eligibility standards for capital expenditures.

2.19. How can funds be used for “installation and improvement of ventilation systems in congregate settings, health care settings, or other public facilities” like commercial buildings, office buildings, schools, nursing homes, multi-family residential buildings, and restaurants?

As a general matter, ventilation improvements, including updates to HVAC systems, improved air filtration, and increased outdoor air flow, can help reduce the concentration and risk of exposure to aerosols, and thus infection with COVID-19.¹ The [National COVID-19 Preparedness Plan](#) specifies that improving ventilation and air filtration is a key component of keeping schools and businesses safely open. Although improvements to ventilation and air cleaning cannot on their own eliminate the risk of airborne transmission of the SARS-CoV-2 virus, the Environmental Protection Agency (EPA) has recommended taking steps to improve [indoor air quality](#) (IAQ) including optimizing fresh air ventilation, enhancing air filtration and cleaning, and managing the way air flows as components of a larger approach that may include individual actions and layered prevention strategies.

Under the SLFRF program, funds for installation and improvement of ventilation systems can be used for projects that respond to the pandemic’s public health impacts and provide longer-term benefits, including the inspection, testing, commissioning, maintenance, repair, replacement, and upgrading of HVAC systems to improve indoor air quality in facilities. Projects can include assessing current HVAC systems, updating HVAC systems, updating air filters, installing functional windows for improved ventilation, repairing windows and doors, installing in-room air cleaning devices, and other projects for improving indoor air quality. For a more extensive guide of how to effectively use funds for ventilation improvements, Treasury recommends reviewing EPA’s [Clean Air in Buildings Challenge](#), a call to action and a set of guiding principles and best practices to assist building owners and operators with improving IAQ in buildings, as well as EPA’s resource page on “[Ventilation and Coronavirus \(COVID-19\)](#).” For a guide on federal programs and resources to support school infrastructure, including ventilation improvements, Treasury recommends consulting the “[White House Toolkit: Federal](#)

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html>;
<https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

[Resources for Addressing School Infrastructure Needs.](#)” Further, Treasury recommends that recipients engage with public health and infection prevention professionals to develop and support an effective COVID-19 mitigation strategy. Finally, Treasury recommends that recipients ensure that the inspection, testing, commissioning, maintenance, repair, replacement, and upgrading of ventilation systems is performed by a skilled, trained, and certified workforce.

Recipients that undertake ventilation system investments under the public health and negative economic impacts eligible use category should review capital expenditure requirements in the final rule and note that capital expenditures must be related and reasonably proportional to the pandemic impact identified.

2.20. In what types of buildings can recipients use funds to install and improve of ventilation systems?

In addition to directly installing and improving ventilation systems in congregate settings, health care settings, or other public facilities, recipients may grant or loan funds to businesses, non-profits, and other entities that may benefit from COVID-19 mitigation measures.

In making these investments, Treasury recommends that recipients consult with public health and infection prevention professionals and that recipients ensure work is performed by a workforce that is skilled, trained, and certified in ventilation systems work. Many buildings would benefit from ventilation improvements, including settings where risk of infection is higher, such as when people are indoors for prolonged periods of time, are in crowded environments, or are performing activities that increase emission of respiratory fluids (such as speaking loudly, singing, or exercising).² This includes commercial buildings, office buildings, dense worksites, schools, nursing homes and other long-term care facilities, multi-family residential buildings, restaurants, correctional facilities, transportation hubs, and public transit vehicles, among other locations. Recipients are encouraged to consider congregate settings and other key locations as priorities for installation and improvement of ventilation systems. Please note that use of funds is not limited to government-owned public facilities and funds may be distributed by recipients to private businesses, non-profits, and others for COVID-19 mitigation and prevention, as the final rule clarifies that recipients may identify the general public as the impacted population for COVID-19 prevention and mitigation services. Recipients should review capital expenditure requirements for the public health and negative economic impacts eligible use category in the final rule before undertaking investments in ventilation systems.

For more information on ventilation system upgrades for school settings, Treasury recommends consulting:

- Creating Healthy Indoor Air Quality in Schools: <https://www.epa.gov/iaq-schools>
- Efficient and Healthy Schools campaign: <https://efficienthealthyschools.lbl.gov/>

² <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

- Efficient and Healthy Schools website:
<https://www.energy.gov/eere/buildings/efficient-and-healthy-schools>

For more information on ventilation system upgrades for office and other commercial building settings, Treasury recommends consulting:

- Enhancing Health with Indoor Air: <https://sftool.gov/learn/about/626/enhancing-health-indoor-air>
- Sustainable Response to COVID-19: <https://sftool.gov/learn/about/625/sustainable-response-covid-19>
- Better Buildings Resource Center: Building Operations during COVID-19 <https://betterbuildingssolutioncenter.energy.gov/covid19>

For more information on ventilation system upgrades for residential settings, Treasury recommends consulting:

- Improving Ventilation in Your Home: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/Improving-Ventilation-Home.html>
- Ventilation in Buildings: <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html>

2.21. Can SLFRF funds be used to support public school facility improvements, upgrades, and new construction – such as those that make buildings more energy efficient, increase their use of renewable energy, address capacity constraints, and respond to health and safety concerns?

Yes. There are numerous ways in which SLFRF funds may be used to support public school facility improvements and upgrades.

First, as part of the public health and negative economic impacts (PH-NEI) eligible use category, SLFRF funds may be used address educational disparities in disproportionately impacted communities,³ which may include funding improvements or new construction of schools and other educational facilities or equipment. Recipients may consider energy efficiency improvements as part of their facility investments, and may also use funds for pre-project development costs, such as assessment of building conditions, energy audits, feasibility studies, HVAC commissioning and testing, and lead testing, that are tied to or reasonably expected to lead to an eligible investment in school facilities to address educational disparities in disproportionately impacted communities. Recipients should review and comply with the requirements applicable to capital expenditures under the public health and negative economic impacts eligible use category as outlined in the final rule.⁴

³ Please see FAQ 2.9 for more on disproportionately impacted communities, and the [Overview of the Final Rule](#) (p.19) for a list of presumed disproportionately impacted communities. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible.

⁴ Please see the [Overview of the Final Rule](#) (p. 30-31) for a summary of capital expenditure requirements for the public health and negative economic impacts eligible use category.

Second, as part of the PH-NEI eligible use category, recipients may use funds for adaptations to schools for the purpose of mitigating the spread of COVID-19, including for ventilation improvements. Similar to the above, recipients should ensure compliance with the capital expenditure requirements for the eligible use category.

Third, as part of the water and sewer infrastructure eligible use category, recipients may invest in certain projects to support lead remediation, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities. Recipients can also invest in certain green water infrastructure projects. Eligible water and sewer projects are generally aligned with those allowable under the EPA's Drinking Water and Clean Water State Revolving Funds, and Treasury has added additional eligible projects as part of the final rule. Recipients should review and comply with the specific requirements provided for in the water and sewer infrastructure eligible use category as outlined in the final rule.

Fourth, as part of the revenue loss eligible use category, which is the broadest eligible use category that is capped by either the \$10 million standard allowance (up to a recipient's award size) or a recipient's calculated revenue loss, recipients may use SLFRF funds on government services. These government services include any service traditionally provided by a government unless Treasury has stated otherwise. Eligible government services that may be covered under the revenue loss eligible use category include maintenance, improvement, or new construction of public school facilities, including those that address over-crowding and capacity constraints, support energy efficiency, and respond to health and safety concerns, among other purposes.

Under the SLFRF program, recipients must obligate all funds by December 31, 2024 and expend funds by December 31, 2026. Recipients may transfer funds to other entities, including local educational agencies, to carry out as a subrecipient an eligible use of funds by the recipient, as long as they comply with program requirements. Recipients should note that the Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program, except for certain SLFRF-funded construction projects undertaken by the District of Columbia. The National Environmental Policy Act (NEPA) does not apply to Treasury's administration of the SLFRF program, although projects supported with SLFRF funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs.

2.22. Would investments in improving outdoor spaces (e.g., parks) be an eligible use of funds as a response to the public health emergency and/or its negative economic impacts?

There are multiple ways that investments in improving outdoor spaces could qualify as eligible uses; several are highlighted below, though there may be other ways that a specific investment in outdoor spaces would meet eligible use criteria.

First, in recognition of the disproportionate negative economic impacts on certain communities and populations, the final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that

promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Second, recipients may provide assistance to disproportionately impacted small businesses. The final rule included rehabilitation of commercial properties, storefront improvements, and façade improvements as enumerated eligible assistance to these small businesses.

Third, recipients can assist small businesses, nonprofits, or other entities to create or enhance outdoor spaces to mitigate the spread of COVID-19 (e.g., restaurant patios).

Recipients pursuing many of these uses should also note the eligibility standards for capital expenditures in the final rule, which are summarized on pages 30-31 of the [Overview of the Final Rule](#).

2.23. Would expenses to address a COVID-related backlog in court cases be an eligible use of funds as a response to the public health emergency?

Yes. The final rule maintains that SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Please see pages 4388-4389 of the final rule. During the COVID-19 public health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from the inability of courts to safely operate during the COVID-19 pandemic decreased the government's ability to administer services. Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.

2.24. Can funds be used for eviction prevention efforts or housing stability services?

Yes. Treasury provided a non-exhaustive list of eligible services in the final rule: Rent, rental arrears, utility costs or arrears (e.g., electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (e.g., rental security deposits, application or screening fees).

Treasury also clarified that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final

rule and continues to be so under the final rule. In addition, Treasury also clarified that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households. The public health and negative economic impacts eligible use category also includes emergency assistance for individuals experiencing homelessness, either individual-level assistance (e.g., rapid rehousing services) or assistance for groups of individuals (e.g., master leases of hotels, motels, or similar facilities to expand available shelter). Please see page 4360 of the final rule for further relevant clarifications.

3. Eligible Uses – Revenue Loss

3.1. Does a recipient need to calculate or provide proof of its revenue loss to use funds for government services?

Recipients may elect a “standard allowance” of up to \$10 million to spend on government services through the period of performance. The standard allowance is available to all recipients and offers a simple, convenient way to determine revenue loss, instead of using the full formula specified in the final rule. Recipients must make a one-time, irrevocable election to either take the standard allowance or calculate revenue loss. Recipients were able to indicate this choice in their Project and Expenditure Reports due April 30, 2022, and recipients may update their revenue loss election, as appropriate, in future reporting cycles through the April 2023 reporting period. Upon update, any prior revenue loss election will be superseded. For example, if a recipient previously elected to calculate revenue loss in their Project and Expenditure Report due April 30, 2022 and this recipient would like to update their election, Treasury’s reporting portal will allow the recipient to supersede their prior election in future reporting cycles and instead take the standard allowance. Similarly, recipients who previously elected the standard allowance and would like to supersede their prior election and instead calculate revenue loss may also update their revenue loss election in future reporting cycles. Recipients continue to be required to employ a consistent methodology across the period of performance (i.e., choose either the standard allowance or the full formula) and may not elect one approach for certain reporting years and the other approach for different reporting years. Recipients who elect the standard allowance do not have to produce any further demonstration or calculation of revenue loss.

Electing the standard allowance does not increase or decrease a recipient’s total allocation. For example, a recipient with an allocation of \$6 million would be allowed to claim no more than \$6 million as revenue loss to use for government services, and a recipient with an allocation of \$12 million would be allowed to claim the full \$10 million standard allowance and use the remaining allocation towards other eligible use categories. Recipients who elect to calculate revenue loss by formula must do so as articulated in the final rule and described in the [Overview of the Final Rule](#) and [FAQ #3.6](#).

3.2. Can revenue loss funds be used for a purpose that is not explicitly listed as an

example of a government service in the Overview of the Final Rule or Final Rule?

Yes. Government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise. Common examples are listed on page 11 of the [Overview of the Final Rule](#) and page 4408 of the final rule, but these lists are not exhaustive. In addition to the common examples described in the final rule, many recipients and stakeholders have asked if using funds for activities like payroll for specific public sector staff, renovations to particular government facilities, and equipment to facilitate and improve government services such as health services, waste disposal, road building and maintenance, and water and sewer services would be eligible as government services. Treasury is clarifying here that under the final rule, payroll for government employees, contracts, grants, supplies and equipment, rent, and the many other costs that governments typically bear to provide services are costs that could comprise the costs of government services, and are eligible uses of funds.

Revenue loss is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section in the Overview of the Final Rule and Final Rule and apply to all eligible use categories, apply to government services as well. Note also that every use that is eligible under other eligible use categories is also eligible under revenue loss, because those eligible uses are also services provided by recipient governments, and Treasury encourages recipients to use their funds for investments that serve the needs of their communities and build a stronger and more equitable recovery.

3.3. Can revenue loss funds be used for a project eligible under other eligible use categories, such as addressing the public health and negative economic impacts of the pandemic, providing premium pay, or investing in water, sewer, or broadband infrastructure?

Yes. The revenue loss eligible use category allows recipients to expend funds with flexibility and streamlined reporting requirements, including on expenditures that would not be eligible under other eligible use categories, like general infrastructure repairs. Recipients may also use revenue loss funds to carry out investments that would be eligible under other eligible use categories, because those eligible uses are also services provided by recipient governments. Treasury encourages the use of government services funds on uses enumerated in these categories, including but not limited to affordable housing, childcare investments, supporting public sector workers, job training and workforce development, and investments in public health.

3.4. How is revenue defined for the purpose of the revenue loss calculation formula?

The final rule adopts a definition of “General Revenue” that is based on, but not identical, to the Census Bureau’s concept of “General Revenue from Own Sources” in the Annual Survey of State and Local Government Finances.

General Revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General Revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General Revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as General Revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in General Revenue.

Please see the appendix for a diagram of the final rule’s definition of General Revenue within the Census Bureau’s revenue classification structure.

3.5. Will revenue be calculated on an entity-wide basis or on a source-by-source basis (e.g. property tax, income tax, sales tax, etc.)?

Recipients should calculate revenue on an entity-wide basis. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the net impact of the COVID-19 public health emergency on a recipient’s revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregate revenue by purpose rather than by source.

Recipients should classify revenue sources as they would if responding to the U.S. Census Bureau’s Annual Survey of State and Local Government Finances. According to the Census Bureau’s [Government Finance and Employment Classification manual](#), the following is an example of current charges that would be included in a state or local government’s General Revenue from own sources: “Gross revenue of facilities operated by a government (swimming pools, recreational marinas and piers, golf courses, skating rinks, museums, zoos, etc.); auxiliary facilities in public recreation areas (camping areas, refreshment stands, gift shops, etc.); lease or use fees from stadiums, auditoriums, and community and convention centers; and rentals from concessions at such facilities.”

Please refer to the appendix for further details on the definition of General Revenue.

3.6. For recipients not electing the \$10 million standard allowance, what is the formula for calculating the reduction in revenue?

Recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. To calculate revenue loss at each of these dates, recipients must follow a four-step process:

a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the base year revenue.

b. Estimate counterfactual revenue, which is equal to the following formula, where n is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{n/12}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

c. Identify actual general revenue, which equals revenues collected over the twelve months immediately preceding the calculation date. Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added to or subtracted from the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022. Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

d. Revenue loss for the calculation date is equal to counterfactual revenue minus actual revenue (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section. Recipients should see the final rule for the full description of the requirements to reflect the effect of tax cuts and tax increases on actual revenue.

3.7. Are recipients expected to demonstrate that reduction in revenue is due to the COVID-19 public health emergency?

Under the final rule, any diminution in actual revenue calculated using the formula above would be presumed to have been “due to” the COVID-19 public health emergency, in the case of both the standard allowance and the formula, which, as discussed above adjusts for certain tax policy changes.

3.8. May recipients use pre-pandemic projections as a basis to estimate the reduction in revenue?

No. Treasury is disallowing the use of projections to ensure consistency and comparability across recipients and to streamline verification. However, in estimating the revenue shortfall using the formula above, recipients may incorporate their average annual revenue growth rate in the three full fiscal years prior to the public health emergency.

3.9. In calculating revenue loss, are recipients required to use audited financials?

Where audited data is not available, recipients are not required to obtain audited data. Treasury expects all information submitted to be complete and accurate.

3.10. In calculating revenue loss, should recipients use their own data, or Census data?

Recipients should use their own data sources to calculate General Revenue, and do not need to rely on published revenue data from the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported General Revenue figures may differ somewhat from those published by the Census Bureau.

3.11. Should recipients calculate revenue loss on a cash basis or an accrual basis?

Recipients may calculate revenue loss on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology for all inputs of the revenue loss calculation throughout the period of performance and until reporting is no longer required.

3.12. In identifying intergovernmental revenue for the purpose of calculating General Revenue, should recipients exclude all federal funding, or just federal funding related to the COVID-19 response? How should local governments treat federal funds that are passed through states or other entities, or federal funds that are intermingled with other funds?

In calculating General Revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a state to a locality pursuant to the Coronavirus Relief Fund or Fiscal Recovery Funds. To the extent federal funds are passed through states or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of General Revenue on a best-efforts basis.

3.13. What entities constitute a government for the purpose of calculating revenue

loss?

In determining whether a particular entity is part of a recipient's government for purposes of measuring a recipient's General Revenue, recipients should identify all the entities included in their government and the General Revenue attributable to these entities on a best-efforts basis. Recipients are encouraged to consider how their administrative structure is organized under state and local statutes. In cases in which the autonomy of certain authorities, commissions, boards, districts, or other entities is not readily distinguishable from the recipient's government, recipients may adopt the Census Bureau's criteria for judging whether an entity is independent from, or a constituent of, a given government. Recipients may not include independent entities in calculating General Revenue. For an entity to be independent, it generally meets all four of the following conditions:

- The entity is an organized entity and possesses corporate powers, such as perpetual succession, the right to sue and be sued, having a name, the ability to make contracts, and the ability to acquire and dispose of property.
- The entity has governmental character, meaning that it provides public services, or wields authority through a popularly elected governing body or officers appointed by public officials. A high degree of responsibility to the public, demonstrated by public reporting requirements or by accessibility of records for public inspection, also evidences governmental character.
- The entity has substantial fiscal independence, meaning it can determine its budget without review and modification by other governments. For instance, the entity can determine its own taxes, charges, and debt issuance without another government's supervision.
- The entity has substantial administrative independence, meaning it has a popularly elected governing body, or has a governing body representing two or more governments, or, in the event its governing body is appointed by another government, the entity performs functions that are essentially different from those of, and are not subject to specification by, its creating government.

If an entity does not meet all four of these conditions, a recipient may classify the entity as part of the recipient's government and include the portion of General Revenue that corresponds to the entity.

To further assist recipients in applying the foregoing criteria, recipients may refer to the Census Bureau's [*Individual State Descriptions: 2017 Census of Governments*](#) publication, which lists specific entities and classes of entities classified as either independent (defined by Census as "special purpose governments") or constituent (defined by Census as "dependent agencies") on a state-by-state basis. Recipients should note that the Census Bureau's lists are not exhaustive and that Census classifications are based on an analysis of state and local statutes as of 2017 and subject to the Census

Bureau's judgment. Though not included in the Census Bureau's publication, state colleges and universities are generally classified as dependent agencies of state governments by the Census Bureau.

If an entity is determined to be part of the recipient's government, the recipient must also determine whether the entity's revenue is covered by the final rule's definition of General Revenue. For example, some cash flows may be outside the definition of General Revenue. In addition, note that the definition of general revenue includes Tribal enterprises in the case of Tribal governments. Refer to [FAQ #3.4](#) and the Appendix for the components included in General Revenue.

3.14. How should recipients that receive multiple allocations (e.g., a city and a county consolidated government) calculate their revenue loss?

If a government entity receives a combined award (e.g., in its capacity both as an NEU and as a Unit of General Local Government (UGLG) within a non-UGLG county), it must determine its revenue loss only once as the combined entity. The government entity may not, for example, elect the standard allowance once as an NEU and once as an UGLG (i.e., it would only be able to claim up to a total of \$10 million standard allowance against all of its awards). Similarly, if the government entity elects to calculate its revenue according to the formula set out in the final rule, it must do so on a combined basis.

In the case of an award to an UGLG within a non-UGLG county under section 603(b)(3)(B)(ii) of the Social Security Act, the UGLG is considered the prime recipient of this award. Therefore, the prime recipient in this circumstance may treat these transferred funds as its own award for purposes of the revenue loss determination.

For example, if an NEU receives \$2 million in its NEU distribution, and then receives an additional \$13 million as an UGLG within a non-UGLG county, and the NEU elects the standard allowance of \$10 million in revenue loss, the NEU would be able to spend up to a total of \$10 million on government services under revenue loss against its awards, and would be able to spend the remaining \$5 million in other expenditure categories.

4. Eligible Uses – General

4.1. How do I know if a specific use is eligible?

The best way to begin evaluation of whether a specific use is an eligible use of SLFRF funds is to consider which of the four eligible use categories the use may fall into.

As a reminder, there are four eligible use categories, ordered below from the broadest and most flexible to the most specific. The [Overview of the Final Rule](#) serves as a summary of the major provisions of each category.

- Replace lost public sector revenue, using this funding to provide government services up to the amount of revenue loss due to the pandemic. (pages 9-11 of the

Overview)

- Support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector. (pages 12-34 of the Overview)
- Provide premium pay for eligible workers performing essential work, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors. (pages 35-36 of the Overview)
- Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet. (pages 37-40 of the Overview)

The SLFRF program provides substantial flexibility for each jurisdiction to meet local needs within these eligible use categories. In general, recipients should think about what services they are trying to provide, and for which groups or populations, and assess whether this use of funds would fit within the parameters of the eligible use category as outlined in the Overview and the final rule. Recipients also should be mindful that various forms of assistance have been made available during the pandemic (e.g., Economic Injury Disaster Loans through the U.S. Small Business Administration), and certain restrictions on duplications of benefits may apply.

Revenue loss eligible use category

If a use does not appear to be eligible under the water, sewer, and broadband infrastructure, premium pay, or public health and negative economic impacts eligible use categories, then recipients should consider using funds under the revenue loss eligible use category. The revenue loss eligible use category provides recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue due to the pandemic.

All recipients may elect a “standard allowance” of up to \$10 million to spend on government services through the period of performance (see [FAQ #3.1](#)), or elect to calculate their revenue loss under the formula provided in the final rule. Under this eligible use category, government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise (see [FAQ #3.2](#)). While recipients can refer to common examples on page 11 of the Overview of the Final Rule and page 4408 of the final rule, these lists are not exhaustive. Every use that is eligible under other eligible use categories is also eligible under revenue loss.

Public health and negative economic impacts eligible use category

To assess the eligibility of a use under the public health and negative economic impacts

eligible use category, recipients may refer initially to the non-exhaustive lists of enumerated uses that respond to pandemic impacts, and the lists of populations presumed to have experienced pandemic impacts and be eligible for responsive services. These lists appear in the Overview and the final rule organized by sub-categories around the types of assistance a recipient may provide. Recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact. Then, recipients should refer to the relevant section for more details on each sub-category of eligible responses.

If a recipient intends to provide enumerated uses of funds to populations presumed eligible, then the use of funds is clearly consistent with the final rule. However, if the intended expenditure does not match an enumerated use serving a presumed eligible population, that does not necessarily mean it is ineligible. Recipients can consider using the broad flexibility available in this eligible use category to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or “classes” of beneficiaries that experienced pandemic impacts and provide services to those classes.

Premium pay eligible use category

To assess whether a use falls under the premium pay eligible use category, recipients can follow the steps outlined on p. 35-36 of the Overview, and refer to the FAQs in [section 5](#).

Water, sewer, and broadband infrastructure eligible use category

To assess whether a use falls under the water, sewer, and broadband infrastructure category, recipients can consult p. 37-40 of the Overview, and refer to the FAQs in [section 6](#).

Recipients should also note the restrictions on use, which are applicable across all eligible use categories, and summarized on p. 41-42 of the Overview.

When assessing whether a specific use is eligible, recipients are not required to submit planned expenditures for prior approval by Treasury, and Treasury is not pre-approving proposed expenditures or calculations of revenue loss. Recipients should review the final rule and the Overview of the Final Rule, and consult with counsel as needed, to evaluate whether a particular expenditure is an eligible use of funds.

4.2. May recipients use funds to invest in traditional infrastructure projects other than water, sewer, and broadband projects (e.g. roads, bridges)?

As discussed in [FAQ #3.2](#), recipients have broad flexibility to use revenue loss funds to provide government services, which generally include any service traditionally provided by a government. These services may include, but are not limited to, maintenance of

infrastructure or pay-go spending for building of new infrastructure, including roads.

Under the public health and negative economic impacts eligible use category, a general infrastructure project typically would not be considered an eligible response unless the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing).

4.3. May recipients use funds to pay interest or principal on outstanding debt?

No. The final rule maintains the restriction on the use of funds for debt service for the reasons described on page 4430 of the final rule and clarifies that this restriction applies to all eligible use categories.

This applies to paying interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt.

4.4. Are governments required to submit proposed expenditures to Treasury for approval?

No. Recipients are not required to submit planned expenditures for prior approval by Treasury. Recipients are subject to the requirements and guidelines for eligible uses contained in the final rule. For more information on compliance and reporting, please see the SLFRF Compliance and Reporting Guidance.

4.5. Do restrictions on using funds to cover costs incurred beginning on March 3, 2021 apply to costs incurred by the recipient (e.g., a State, local, territorial, or Tribal government) or to costs incurred by households, businesses, and individuals benefiting from assistance provided using funds?

The final rule permits funds to be used to cover costs incurred beginning on March 3, 2021. This limitation applies to costs incurred by the recipient (i.e., the state, local, territorial, or Tribal government receiving funds). Recipients may use SLFRF funds to provide assistance to households, businesses, and individuals within the eligible use categories described in the final rule for economic harms experienced by those households, businesses, and individuals prior to March 3, 2021. For example,

- Public Health/Negative Economic Impacts – Recipients may use SLFRF funds to provide assistance to households – such as rent, mortgage, or utility assistance – for economic harms experienced or costs incurred by the household prior to March 3, 2021 (e.g., rental arrears from preceding months), provided that the cost of providing assistance to the household was not incurred by the recipient prior to March 3, 2021.

- Premium Pay – As discussed further in [FAQ #5.2](#), recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021. Employers may not simply reimburse themselves for pay already received by the employee.
- Revenue Loss – The final rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue due to the pandemic. If the recipient has elected to calculate lost revenue, the calculation begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency. However, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- Investments in Water, Sewer, and Broadband – Recipients may use SLFRF funds to make necessary investments in water, sewer, and broadband. See [FAQ Section 6](#). Recipients may use funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the funds were incurred after March 3, 2021.

4.6. May recipients use funds to satisfy non-federal matching requirements?

Generally, yes, if using funds available under the revenue loss eligible use category, and no, if using funds under any other eligible use category, except as discussed further below.

Funds available under the revenue loss eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state’s Medicaid and Children’s Health Insurance Programs (CHIP) because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further

details if they seek to utilize SLFRF funds as a match for these projects.

4.7. May recipients pool funds for regional projects?

Yes, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the final rule supplementary information. A recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county, or an NEU transferring its funds to a County), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

4.8. May recipients fund a project with both ARPA funds and other sources of funding (e.g., blending, braiding, or other pairing funding sources), including in conjunction with financing provided through a debt issuance?

Generally, yes, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies, including restrictions on use of funds.

The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects.

Recipients may source funding for a project in multiple ways, including, but not limited to, the following:

- Using funds available under the revenue loss eligible use category for non-federal match (see [FAQ #4.6](#))
- Pooling funds for a joint project with another SLFRF recipient (see [FAQ #4.7](#))
- Transferring funds to a subrecipient to finance a project that also uses other sources of funding
- Blending or braiding SLFRF funds with other sources of government funding, including debt issuance, to pursue a project

Localities may also transfer their funds to the state through section 603(c)(4) of the Social Security Act, which will decrease the locality's award and increase the state award amounts.

Note that using a recipient blending and braiding funds in conjunction with other sources of funding is distinct from using funds for non-federal match. In the case of non-federal match, the recipient would be using SLFRF funds to satisfy cost-sharing or matching requirements in order to qualify for another source of federal funding, while blending and braiding refers to using multiple sources of funding for complementary purposes.

If the entirety of a project is funded with SLFRF funds, then the entire project must be an eligible use. The use of funds would be subject to the deadline on obligating funds no later than December 31, 2024 and expending funds no later than December 31, 2026. If a project is only partially funded with SLFRF funds, then the portion of the project funded must be an eligible use and the SLFRF funds must also be obligated by December 31, 2024 and expended by December 31, 2026. In either case, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

SLFRF funds may not be used to fund the entirety of a project that is partially, although not entirely, an eligible use under Treasury’s final rule. However, SLFRF funds may be used for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned project that does not constitute an eligible use. In this case, the “project” for SLFRF purposes under this program would be only the eligible use component of the larger project. For example, a recipient government may use SLFRF funds to subsidize the production of affordable housing units as a response to the pandemic and its negative economic impacts and use other funds to build other parts of a larger development that contains these affordable units.

4.9. May funds be used to make loans or other extensions of credit (“loans”) to support an eligible use?

Yes. SLFRF funds may be used to make loans, provided that the loan supports an activity that is an eligible use of funds, the SLFRF funds used to make the loan are obligated by December 31, 2024 and expended by December 31, 2026, and the cost of the loan is tracked and reported in accordance with the points below. For example, a recipient may, consistent with the requirements of the interim final rule and final rule, use funds to finance the construction of affordable housing, or to finance a necessary investment in water, sewer or broadband.

Funds must be used to cover “costs incurred” by the recipient between March 3, 2021, and December 31, 2024, and funds must be expended by December 31, 2026. Accordingly, recipients must be able to determine the amount of funds used to make a loan.

- For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with the approach to loans taken in the Coronavirus Relief Fund.
 - Recipients may use SLFRF funds to fund the principal of the loan and in that

case must track repayment of principal and interest (i.e., “program income,” as defined under 2 CFR 200).

- When the loan is made, recipients must report the principal of the loan as an expense.
- Repayment of principal may be re-used only for eligible uses and subject to restrictions on timing of use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.
- For loans with maturities longer than December 31, 2026, the recipient may use funds for only the projected cost of the loan.
 - Recipients can project the cost of the loan by estimating the subsidy cost. The subsidy cost is the estimated present value of the cash flows from the recipient (excluding administrative expenses) less the estimated present value of the cash flows to the recipient resulting from a loan, discounted at the recipient’s cost of funding and discounted to the time when the loan is disbursed. The cash flows are the contractual cash flows adjusted for expected deviations from the contract terms (delinquencies, defaults, prepayments, and other factors). A recipient’s cost of funding can be determined based on the interest rates of securities with a similar maturity to the cash flow being discounted that were either (i) recently issued by the recipient or (ii) recently issued by a unit of state, local, or Tribal government similar to the recipient.
 - Alternatively, recipients may treat the cost of the loan as equal to the expected credit losses over the life of the loan based on the Current Expected Credit Loss (CECL) standard. Recipients may measure projected losses either once, at the time the loan is extended, or annually over the period of performance.
 - Under either approach for measuring the amount of funds used to make loans with maturities longer than December 31, 2026, recipients would not be subject to restrictions under 2 CFR 200.307(e)(1) and need not separately track repayment of principal or interest.
 - Additionally, recipients may use funds for eligible administrative expenses incurred in the period of performance, which include the reasonable administrative expenses associated with a loan made in whole, or in part, with funds. See section IV.E of the final rule.
- Contributions to Revolving Loan Funds. A recipient may contribute funds to a revolving loan fund if the loaned SLFRF funds are restricted to financing eligible

uses under the public health emergency/negative economic impacts, premium pay, and necessary water, sewer and broadband categories (or under the government services category if the contribution to the revolving fund is made using revenue loss funds). The funds contributed using SLFRF funds must be limited to the projected cost of loans made over the life of the revolving loan fund, following the approach described above for loans with maturities longer than December 31, 2026.

- Loans funded with SLFRF funds under the revenue loss eligible use category. Notwithstanding the above, if a recipient uses revenue loss funds to fund a loan, whether or not the maturity of the loan is after December 31, 2026, the loaned funds may be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income rules. Similarly, any contribution of revenue loss funds to a revolving loan fund may also follow the approach of loans funded under the revenue loss eligible use category.
- Loans to fund investments in affordable housing projects. Notwithstanding the above requirements for loans with maturities beyond December 31, 2026, Treasury has determined that SLFRF funds may be used to finance certain loans that finance affordable housing investments, as it is typical for state and local governments to finance such investments through loans and because the features of these loans significantly mitigate concerns about funds being deployed for purposes of recycling funds, potentially for ineligible uses, following the SLFRF program’s expenditure deadline. Specifically, under the “public health and negative economic impacts” eligible use category, recipients may use SLFRF funds to make loans to finance affordable housing projects, funding the full principal amount of the loan, if the loan and project meet the following requirements:
 - The loan has a term of not less than 20 years;
 - The affordable housing project being financed has an affordability period of not less than 20 years after the project or assisted units are available for occupancy after having received the SLFRF investment; and
 - For loans to finance projects expected to be eligible for the low-income housing credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code),
 - the project owner must agree, as a condition for accepting such a loan, to waive any right to request a qualified contract (as defined in section 42(h)(6)(F) of the Code); and
 - the project owner must agree to repay any loaned funds to the entity that originated the loan at the time the project becomes non-compliant, including if such project ceases to satisfy the requirements to be a qualified low-income housing project (as defined in section 42(g) of the Code) or a qualified residential rental project (as defined in section 142(d) of the Code), or if such project fails to comply with any of the requirements of the extended low-income housing commitment that

are described in section 42(h)(6)(B)(i)-(iv) of the Code.

Loans that fund investments in affordable housing projects under the public health and negative economic impacts eligible use category and meet the above criteria may be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income rules. Loan modifications are permitted if the modifications do not result in repayment of all or substantially all funds to the lender prior to the end of the affordability period. To reduce administrative complexity, the start date of the 20-year affordability covenant may conform to the start date of other covenants on the same project or units that are required by another source of federal or state funding associated with the project or units.

4.10. May funds be used for outreach to increase uptake of federal assistance like the Child Tax Credit or federal programs like SNAP?

Yes. Eligible uses to address negative economic impacts include “assistance accessing or applying for public benefits or services.” This can include benefits navigators or marketing efforts to increase consumer uptake of federal tax credits, benefits, or assistance programs that respond to negative economic impacts of the pandemic.” Of note, per the final rule, allowable uses of funds for evaluations may also include other types of program evaluations focused on program improvement and evidence building.

5. Eligible Uses – Premium Pay

5.1. What criteria should recipients use in identifying workers to receive premium pay?

SLFRF may be used to provide premium pay to eligible workers performing essential work during the pandemic or to provide grants to eligible employers that have eligible workers who perform essential work. Premium pay may be awarded to eligible workers up to \$13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed \$25,000 for any single worker during the program.

Premium pay must be responsive to eligible workers performing essential work during the pandemic, and like the interim final rule, the final rule emphasizes the need for recipients to prioritize premium pay for lower-income workers. Premium pay that would go to a worker whose total pay is above 150% of the greater of the state or county average annual wage for all occupations (with or without the premium) requires specific justification for how it responds to the needs of these workers unless that worker is not exempt from the Fair Labor Standards Act overtime provisions.

For a detailed description of what constitutes an eligible worker and essential work as well other premium pay requirements, please see pages 35-36 of the [Overview of the](#)

[Final Rule.](#)

5.2. May recipients provide premium pay retroactively for work already performed?

Yes. Treasury encourages recipients to consider providing premium pay retroactively for work performed during the pandemic, recognizing that many essential workers have not yet received additional compensation for their service during the pandemic. SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received.

5.3. Can SLFRF be used to pay for benefits and taxes associated with premium pay wages?

Premium pay is taxable as wage income, and therefore, employers are encouraged to treat the premium pay earned by the employee just as they would other wage income and withhold from the additional pay any required taxes. For further guidance, please see the [FAQ published by the IRS on SLFRF](#).

5.4. Does non-base compensation, such as overtime, count toward the 150% pay threshold? Is the 150% threshold calculated based off of income only from the awarding employer or from an employee’s total yearly compensation?

Yes, non-base compensation, including overtime and bonuses, counts toward the 150% pay threshold; however, the 150% pay threshold does *not* take into account other sources of income earned by an employee (e.g., income from a second job). For an hourly employee, or an employee that does not have a year’s worth of earnings, an employer should extrapolate the hourly wage at an annual rate by multiplying the hourly rate by forty hours per week and then by fifty-two weeks per year.

6. Eligible Uses – Water, Sewer, and Broadband Infrastructure

6.1. What types of water and sewer projects are eligible uses of funds?

Eligible water and sewer projects are outlined on pages 37-38 of the [Overview of the Final Rule](#). Under the interim final rule, SLFRF funds could be used to fund projects that would be eligible under EPA’s Clean Water State Revolving Fund or Drinking Water State Revolving Fund. With broadened eligibility under the final rule, SLFRF funds may also be used to fund additional types of projects — such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined on page 38 of the Overview.

6.2. May recipients use funds as a non-federal match for the Clean Water State

Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

Per [FAQ #4.6](#), SLFRF funds available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency (the revenue loss eligible use category), may be used to meet the non-federal cost-share or matching requirements of other federal programs, including the CWSRF and DWSRF programs administered by the EPA. Per [FAQ #4.9](#), loans funded under the revenue loss eligible use category may be deemed expended at the point of disbursement. Thus, recipients using SLFRF funds available under revenue loss for non-federal matching requirements for the DWSRF or CWSRF may consider funds expended at the point the recipient makes the deposit into the State Revolving Funds. Recipients using SLFRF funds available under revenue loss should log projects under expenditure category 6.2.

As further noted in [FAQ #4.6](#), SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. Recipients using funds under the eligible use category for water and sewer infrastructure may not use funds as a state match for the CWSRF and DWSRF.

6.3. Does the National Environmental Policy Act (NEPA) apply to projects funded with SLFRF funds?

NEPA does not apply to Treasury's administration of the funds, including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements.

6.4. What types of broadband projects are eligible uses of funds?

Recipients are required to design projects that, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds where practicable. More details on eligible broadband projects, including eligible areas for investment and the affordability requirement, are outlined on pages 39-40 of the [Overview of the Final Rule](#).

6.5. For broadband investments, may recipients use funds for related programs such as cybersecurity or digital literacy training?

Yes. In the final rule, Treasury maintained the enumerated eligible use for assistance to households for internet access and digital literacy programs. Recipients may use funds to provide assistance to households facing negative economic impacts due to the pandemic, including digital literacy training and other programs that promote access to the Internet.

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of

hardware and software. Under the final rule, recipients may also invest in general cybersecurity upgrades, unrelated to broadband infrastructure, under the revenue loss eligible use category.

6.6. Do I need pre-approval for my water, sewer, or broadband project?

See [FAQ #4.4](#). Generally, recipients are not required to submit planned expenditures for prior approval by Treasury and recipients are subject to the requirements and guidelines for eligible uses contained in the final rule.

While recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state’s eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require preapproval from another federal or state agency.

6.7. For broadband infrastructure investments, what are eligible areas of investment?

Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service, but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. For more details, see page 39 of the [Overview of the Final Rule](#).

6.8. May recipients use payments from the SLFRF for “middle mile” broadband projects?

Yes. Under the final rule, recipients may use payments from the SLFRF for “middle-mile projects,” but Treasury encourages recipients to focus on projects that will achieve last-mile connections—whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

6.9. For broadband infrastructure investments, what does the requirement to “reliably” meet or exceed a broadband speed threshold mean?

See page 39 of the [Overview of the Final Rule](#), as well as pages 4419-4420 of the final rule.

6.10. May recipients use funds for pre-project development for eligible water, sewer, and broadband projects?

Yes. To determine whether funds can be used on pre-project development for an eligible water or sewer project, recipients should consult whether the pre-project development use or cost is eligible under the Drinking Water and Clean Water State Revolving Funds (DWSRF and CWSRF, respectively). Generally, the CWSRF and DWSRF often allow for pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. For example, the DWSRF [allows](#) for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF [allows](#) for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans.

Similarly, pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For example, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project (e.g., broadband mapping for the purposes of finding an eligible area for investment).

All funds must be obligated by recipients within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.

6.11. May funds be used to support energy or electrification infrastructure that would be used to power new water treatment plants and wastewater systems?

The EPA's [Overview of Clean Water State Revolving Fund Eligibilities](#) describes eligible energy-related projects. This includes a “[p]ro rata share of capital costs of offsite clean energy facilities that provide power to a treatment works.” Thus, SLFRF funds may be used to finance the generation and delivery of clean power to a wastewater system or a water treatment plant on a pro-rata basis. If the wastewater system or water treatment plant is the sole user of the clean energy, the full cost would be considered an eligible use of funds. If the clean energy provider provides power to other entities, only the proportionate share used by the water treatment plant or wastewater system would be an eligible use of funds.

6.12. How should states and local governments assess whether a stormwater management project, such as a culvert replacement, is an eligible project?

Pages 37-38 of the [Overview of the Final Rule](#) describe the overall approach that recipients must take to evaluate the eligibility of water or sewer projects. With broadened eligibility under the final rule, a wide range of culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure are eligible projects, as outlined further in the final rule.

6.13. May recipients use funds for road repairs and upgrades that occur in connection with an eligible water or sewer project?

Yes, recipients may use SLFRF funds for road repairs and upgrades directly related to an eligible water or sewer project. For example, a recipient could use funds to repair or repave a road following eligible sewer repair work beneath it. However, use of funds for general infrastructure projects is subject to the limitations described in [FAQ #8.1](#). Water and sewer infrastructure projects are often a single component of a broader transportation infrastructure project, for example, the implementation of stormwater infrastructure to meet Clean Water Act established water quality standards. In this example, the components of the infrastructure project that interact directly with the stormwater infrastructure project may be funded by SLFRF funds.

6.14. May funds be used to build or upgrade broadband connections to schools or libraries?

As outlined in the final rule, recipients may use SLFRF funds to invest in broadband infrastructure that, where practicable, is designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps to households or businesses with an identified need for additional broadband investment. “Businesses” in this context refers broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

6.15. Are eligible water, sewer, and broadband infrastructure projects, eligible capital expenditures under the public health and negative economic impacts eligible use category, and eligible projects under the revenue loss eligible use category subject to the Davis-Bacon Act?

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program, except for SLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (SLFRF funds or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects. Please refer to

[FAQ #4.8](#) concerning projects funded with both SLFRF funds and other sources of funding.

Treasury has indicated in its final rule that it is important that capital expenditure projects and necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality results, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that capital expenditure projects and water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for capital expenditure projects and infrastructure projects over \$10 million, and that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance for more detailed information on the reporting requirement.

6.16. What is the difference between using funds for eligible water and sewer projects and using funds under revenue loss for non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

As noted in [FAQ #6.1](#) and the Overview of the Final Rule, eligible projects that a recipient may fund under the water and sewer infrastructure eligible use category of SLFRF include eligible projects under EPA’s CWSRF and EPA’s DWSRF. Recipients may also fund certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units. Per [FAQ #6.6](#), recipients spending SLFRF funds under the water and sewer eligible use category are not required to obtain project pre-approval from Treasury or any other federal agency unless otherwise required by federal law.

Projects that recipients undertake with SLFRF funds under the water and sewer eligible use category are separate and distinct from projects that a recipient manages through their CWSRF and DWSRF. As noted in [FAQ #4.6](#) and [FAQ #6.2](#), recipients may use funds under the revenue loss eligible use category for non-federal matching requirements, including for EPA’s Clean Water State Revolving Fund and EPA’s Drinking Water State Revolving Fund. By contrast, funds spent under the water and sewer infrastructure eligible use category may not be used to meet non-federal matching requirements.

6.17. Can SLFRF funds be used to pay for the replacement or placement of utility poles under the water, sewer, and broadband infrastructure eligible use category?

Under the water, sewer, and broadband infrastructure eligible use category, the replacement or placement of utility poles is eligible when it is directly related to or part of an eligible SLFRF infrastructure project, such as an eligible SLFRF broadband infrastructure project that is consistent with Treasury's final rule. The use of SLFRF funds to fund a project for which the only purpose is to pay for the replacement or placement of utility poles is not an eligible use under the water, sewer, broadband infrastructure eligible use category.

6.18. Do the Buy America Preference requirements for infrastructure projects apply to awards made under the SLFRF program?

Awards made under the SLFRF program are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58.

6.19. Do the Buy America Preference requirements for infrastructure projects apply to SLFRF-funded projects if they are supplemented with funding from other federal financial assistance programs?

Infrastructure projects funded solely with SLFRF award funds are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58. SLFRF recipients may be otherwise subject to the Buy America Preference requirements when SLFRF award funds are used on an infrastructure project in conjunction with funds from other federal programs that require compliance with the Buy America Preference requirements. Recipients are advised to consult with the other federal agencies administering federal financial assistance that is being blended or braided with SLFRF funds regarding the applicability of the Buy America Preference requirements.

6.20. Does Section 106 of the National Historic Preservation Act (NHPA) apply to projects funded with SLFRF funds?

Section 106 of the NHPA does not apply to Treasury's administration of SLFRF funds, including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to Section 106 of the NHPA if they involve participation from other federal agencies, including funding from other federal financial assistance programs, or are subject to receipt of approvals from other federal agencies.

7. Non-Entitlement Units (NEUs)

Answers to frequently asked questions on distribution of funds to NEUs can be found in this [FAQ supplement](#).

8. Ineligible Uses

8.1. May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds and similar reserve funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services, since such expenses do not directly relate to the provision of government services.

8.2. What is meant by a pension “deposit”? Can governments use funds for routine pension contributions for employees whose payroll and covered benefits are eligible expenses?

In the context of the restriction on deposits into pension funds, “deposit” means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer’s obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer’s payroll costs.

In general, if an employee’s wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee’s covered benefits as an eligible use of funds.

8.3. May recipients use Fiscal Recovery Funds to fund Other Post-Employment Benefits (OPEB)?

OPEB refers to benefits other than pensions (see, e.g., [Governmental Accounting Standards Board, “Other Post-Employment Benefits”](#)). Treasury has determined that Sections 602(c)(2)(B) and 603(c)(2) of the Social Security Act, which refer only to deposits to pensions funds, do not prohibit SLFRF recipients from funding OPEB. Recipients may use funds for eligible uses, and a recipient seeking to use SLFRF funds for OPEB contributions would need to justify those contributions under one of the four eligible use categories.

9. Reporting

Recipients should consult the Recipient Compliance and Reporting Responsibilities [page on Treasury’s website](#) to access the latest Compliance and Reporting Guidance. Recipients

should consult this guidance for additional detail and clarification on recipients' compliance and reporting responsibilities. User guides, which also contain FAQs pertaining to reporting, are provided for additional information.

10. Miscellaneous

10.1. Are recipients required to remit interest earned on SLFRF payments made by Treasury?

No. SLFRF payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 to remit interest to Treasury. SLFRF payments made by Treasury to local governments and Tribes are not subject to the requirements of 2 CFR 200.305(b)(8) and(9) to maintain SLFRF award funds in an interest-bearing account and remit interest earned above \$500 on such payments to Treasury. Moreover, interest earned on SLFRF award funds is not subject to program restrictions. Finally, states may retain interest on payments made by Treasury to the state for distribution to NEUs that is earned before funds are distributed to NEUs, provided that the state adheres to the statutory requirements and Treasury's guidance regarding the distribution of funds to NEUs. Such interest is also not subject to program restrictions.

Among other things, states and other recipients may use earned income to defray the administrative expenses of the program, including with respect to NEUs.

10.2. May recipients use funds to cover the costs of consultants to assist with managing and administering the funds?

Yes. Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.

11. Operations

11.1. How do I know if my entity is eligible?

The American Rescue Plan Act of 2021 set forth the jurisdictions eligible to receive funds under the SLFRF program, which are:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities (typically, but not always, those with populations over 50,000)
- Non-entitlement units of local government, or smaller local governments

(typically, but not always, those with populations under 50,000)

11.2. How does an eligible entity request payment?

Eligible entities (other than non-entitlement units) must submit their information to the [Treasury Submission Portal](#). Please visit the [Coronavirus State and Local Fiscal Recovery Fund website](#) for more information on the submission process.

11.3. I cannot log into the Treasury Submission Portal or am having trouble navigating it. Who can help me?

If you have questions about the Treasury Submission Portal or for technical support, please email covidreliefitsupport@treasury.gov.

11.4. What do I need to do to receive my payment?

All eligible payees are required to have a Unique Entity ID (UEI) as part of registration in addition to maintaining an active registration in the System for Award Management (SAM) (<https://www.sam.gov>).

Eligible payees must have a bank account enabled for Automated Clearing House (ACH) direct deposit. Payees with a Wire account are encouraged to provide that information as well.

More information on these and all program pre-submission requirements can be found on the [SLFRF website](#).

11.5. Why is Treasury employing ID.me for the Treasury Submission Portal?

ID.me is only required for submitting applications for funding in the Treasury Portal. ID.me is not required for users accessing the Treasury portal to complete reporting.

ID.me provides secure digital identity verification to those government agencies and healthcare providers to validate the individual entity – and block fraudulent attempts to access online services. All personally identifiable information provided to ID.me is encrypted and disclosed only with the express consent of the user. Please refer to ID.me Contact Support for assistance with your ID.me account. Their support website is <https://help.id.me>.

11.6. Why is an entity not on the list of eligible entities in the Treasury Submission Portal?

The ARPA lays out which governments are eligible for payments. The list of entities within the Treasury Submission Portal includes entities eligible to receive a direct

payment of funds from Treasury, which include states (defined to include the District of Columbia), territories, Tribal governments, counties, and metropolitan cities.

Eligible non-entitlement units of local government will receive a distribution of funds from their respective state government and should not submit information to the Treasury Submission Portal.

If you believe an entity has been mistakenly left off the eligible entity list, please email SLFRF@treasury.gov.

11.7. What is an Authorized Representative?

An Authorized Representative is an individual with legal authority to bind the government entity (e.g., the Chief Executive Officer of the government entity). An Authorized Representative must sign the Acceptance of Award terms for it to be valid.

11.8. How do I know the status of my request for funds (submission)?

Entities can check the status of their submission at any time by logging into the [Treasury Submission Portal](#).

11.9. My Treasury Submission Portal submission requires additional information/correction. What is the process for that?

If your Authorized Representative has not yet signed the award terms, you can edit your submission within the [Treasury Submission Portal](#). If your Authorized Representative has signed the award terms, please email SLFRF@treasury.gov to request assistance with updating your information.

11.10. My request for funds was denied. How do I find out why it was denied or appeal the decision?

Please check to ensure that no one else from your entity has applied, causing a duplicate submission. Please also review the list of all eligible entities on the [Coronavirus State and Local Fiscal Recovery Fund website](#).

If you still have questions regarding your submission, please email SLFRF@treasury.gov.

11.11. When will entities get their money?

Before Treasury is able to execute a payment, a representative of an eligible government must submit the government's information for verification through the [Treasury Submission Portal](#). The verification process takes approximately four business days. If

any errors are identified, the designated point of contact for the government will be contacted via email to correct the information before the payment can proceed. Once verification is complete, the designated point of contact of the eligible government will receive an email notifying them that their submission has been verified. Payments are generally scheduled for the next business day after this verification email, though funds may not be available immediately due to processing time of their financial institution.

11.12. How does a local government entity provide Treasury with a notice of transfer of funds to its State?

For more information on how to provide Treasury with notice of transfer to a state, please email SLRedirectFunds@treasury.gov.

12. Tribal Governments

12.1. Do Treasury’s pandemic recovery program awards terms and conditions impose civil rights laws on Tribes?

The award terms and conditions for Treasury’s pandemic recovery programs, including SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law. Treasury has amended its reporting requirements with respect to the SLFRF, Treasury’s Emergency Rental Assistance Program, and Homeowner Assistance Fund to reflect this clarification.

12.2. How does a Tribal government determine its allocation?

Tribal governments received information about their allocation when their submission to the Treasury Submission Portal was confirmed to be complete and accurate.

13. Uniform Guidance

13.1. What provisions of the Uniform Guidance for grants apply to these funds? Will the Single Audit requirements apply?

Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Cost Principles and Single Audit Act requirements. Recipients should refer to the Assistance Listing for detail on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing will be available at <https://sam.gov/fal/7cecfdef62dc42729a3fdcd449bd62b8/view>.

For information related to Single Audit requirements specifically, please refer to the [Compliance Supplement materials](#) released by the Office of Management and Budget.

13.2. Do federal procurement requirements apply to SLFRF?

Yes. The procurement standards for federal financial assistance are located in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200.317 through 2 CFR 200.327 and apply to procurements using SLFRF funds. Pursuant to 2 CFR 200.317, recipients that are non-state entities, such as, metropolitan cities, counties, non-entitlement units of local government, and Tribes must comply with the procurement standards set forth in 2 CFR 200.318, through 2 CFR 200.327, when using their SLFRF award funds to procure goods and services to carry out the objectives of their SLFRF award. States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317, as well as comply with the procurement standards set forth at 2 CFR 200.321 through 2 CFR 200.323, and 2 CFR 200.327 when using their SLFRF award funds to procure goods and services to carry out the objectives of their SLFRF award. *See also* SLFRF Award Terms and Conditions.

Recipients are prohibited from using SLFRF funds to enter into subawards and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs. *See* [2 CFR 200.214](#).

Moreover, a contract made under emergency circumstances under the Coronavirus Relief Fund (CRF) cannot automatically be transferred over to SLFRF. These programs are subject to different treatment under the Uniform Guidance. Under the CRF program, recipients are permitted to use their own procurement policies to acquire goods and services to implement the objectives of the CRF award. Under the SLFRF program, recipients are required to follow the procurement standards set out in 2 CFR Part 200 (Uniform Guidance) pursuant to the SLFRF Award Terms and Conditions executed by the recipients in connection with their SLFRF awards.

13.3. What is the threshold for competitive bidding for my government?

As stated above, recipients are required to comply with the procurement standards set forth in 2 CFR 200.317 through 2 CFR 200.327 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Pursuant to 2 CFR 200.317, States, the District of Columbia, and U.S. Territories should refer to the competitive bidding thresholds described in their own procurement policies and procedures. Other non-federal entities, such as metropolitan cities, counties, non-entitlement units of local government, and Tribes must adhere to the competitive bidding thresholds set forth in 2 CFR 200.320 for the relevant procurement methods.

[2 CFR 200.320 describes methods of procurement based](#) on two procurement thresholds. There are two thresholds that recipients should keep in mind related to procurement requirements: the Micro purchase threshold (MPT) and the Simplified Acquisition Threshold (SAT).

Micro-purchase threshold (MPT) - 2 CFR 200.320(a)(1): Purchase of supplies and services for a price below the MPT, currently set at \$10,000, are not required to be solicited competitively. However, there are circumstances when a recipient may have a MPT that is greater than \$10,000. For example, all non-Federal entities may increase their MPT up to

\$50,000 if they follow the protocols described in 200.320(a)(1)(iv). Additionally, non-federal entities such as metropolitan cities, counties, non-entitlement units of local government, and Tribes may use their own MPT if they follow the protocols described in 200.320(a)(1)(iv).

Simplified Acquisition Threshold (SAT) - 2 CFR 200.320(a)(2): Purchases of property and services at a price above the recipient's MPT and below the SAT, currently set at \$250,000, may be made following the small purchase procedures described in the definition of SAT in 2 CFR 200.1 and 2 CFR 200.320(a)(2). Procurement of property and services at a price above the SAT must follow the formal procurement methods outlined in 2 CFR 200.320(b).

13.4. Can a recipient prequalify firms for projects funded with SLFRF?

The Uniform Guidance permits recipients to use prequalified lists of persons, firms, or products so long as a list is current and includes enough qualified sources to ensure maximum open and free competition. The Uniform Guidance does not specifically define the term "current" for purposes of 2 CFR 200.319(e), and Treasury has not adopted additional guidance regarding this requirement as it applies to the SLFRF. As such, recipients must determine when a prequalified list would be sufficiently current, and a recipient must not preclude potential bidders from qualifying during the solicitation period. See 2 CFR 200.319(e). Furthermore, recipients may not utilize this provision to evade conducting their procurement transactions in a manner that provides for full and open competition.

Recipients should be mindful that other provisions of the Uniform Guidance inform the procurement requirements. For example, metropolitan cities, counties, non-entitlement units of local government, and Tribes must have and use documented procurement procedures, consistent with binding State, local, and Tribal laws and regulations. See 2 CFR 200.318(a).

13.5. Where can one find the most current information on assuring minority-owned businesses are included in the awards process?

The most up-to-date information on assuring that minority-owned businesses are included in the procurement process is located in [2 CFR 200.321](#), *Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms*.

13.6. Is there certain language that needs to be included in a bidding package?

Treasury does not require that there be specific language included in bidding packages, but SLFRF recipients must ensure all contracts made with SLFRF award funds contain the applicable contract provisions listed in 2 CFR Part 200, Appendix II.

13.7. Are recipients allowed to leverage existing contracts?

Recipients may leverage existing contracts for SLFRF activities if the existing contracts conform to the procurement standards in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 (Uniform Guidance). States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317 as well as comply with the procurement standards set forth at 2 CFR 200.321 through 2 CFR 200.323, and 2 CFR 200.327. All other recipients must follow 2 CFR 200.318, *General procurement standards*, through 200.327, *Contract provisions*.

13.8. Would an interlocal agreement—an agreement entered into between governments to effectuate an eligible use of the funds—or a cooperative purchase agreement need to be bid out?

States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317 as well as comply with the procurement standards set forth at 2 CFR 200.321 through 2 CFR 200.323, and 2 CFR 200.327. All other recipients must follow 2 CFR 200.318, *General procurement standards*, through 200.327, *Contract provisions*.

Recipients should consult the applicable procurement standards or policies to determine whether a cooperative purchase agreement must be bid out. Information on when competition is required and when exceptions to competition are permitted are located in 2 CFR 200.319, *Competition*, and 2 CFR 200.320, *Methods of procurement to be followed*.

It is permissible for recipients to use interlocal agreements but procurement standards set forth in the Uniform Guidance may still apply.

13.9. How is a “contract” different than a “subaward?”

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 (Uniform Guidance) provides definitions for “contract” and “subaward.” A *contract* is a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award. A *subaward* is distinct from a contract in that a subaward is an award provided by a recipient of a federal award to a subrecipient to carry out part of a federal award on behalf of the recipient. Recipients may make subawards through any form of legal agreement, including an agreement that the recipient considers a contract. See 2 CFR 200.331 for more information on the differences between contracts and subawards.

13.10. What other background laws must recipients comply with?

SLFRF recipients must comply with all laws outlined in the SLFRF Award Terms and Conditions that the recipients accepted in connection with their SLFRF award and all other applicable executive orders, federal statutes, and regulations in carrying out their SLFRF award. Recipients must also provide for such compliance by other parties in any agreements it enters into with other parties relating to the award. The award terms listed

specific statutes and regulations that apply to the award, but the award terms made clear that these lists were not exclusive. Particularly in the case of the SLFRF, it's not possible to enumerate the full list of federal statutes, regulations and executive orders that may be applicable to the award given that the range of eligible uses of funds is so broad, including the provision of government services.

13.11. How does Treasury treat program income?

Per 2 CFR 200.307, Treasury is specifying here that recipients may add program income to the Federal award. Any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award.

Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds. Interest earned on advances of federal funds **is not** program income. For more information on what constitutes "Program Income" please see 2 CFR 200.1.

13.12. Does COVID-19 and the national emergency qualify as "exigency" as a special circumstance under 2 CFR 200.320 (c) in which a noncompetitive procurement can be used? If so, may a contract utilizing this special circumstance have a term that extends beyond the national emergency? For example, may the County execute a contract (without going through a competitive solicitation) immediately with a contractor to provide services with a term through the end of 2024, relying upon this special circumstance?

The COVID-19 public health emergency does not itself qualify as a "public exigency or emergency" under 2 CFR 200.320 (c). In other words, a recipient may not justify a noncompetitive procurement simply on the basis that the procurement is conducted during the public health emergency or that the project is in response to the public health emergency.

Instead, the recipient must make its own assessment as to whether in the case of a particular project there is a public exigency or emergency that "will not permit a delay resulting from publicizing a competitive solicitation."

13.13. What compliance and reporting requirements apply to subrecipients and beneficiaries?

As detailed in Treasury's [Compliance and Reporting Guidance](#) (pg. 11), subrecipients are required to comply with all of the restrictions applicable to recipients, including audit requirements under the Single Audit Act, whereas beneficiaries are not subject to these requirements. The distinction between subrecipients and beneficiaries is addressed in the

supplemental information to Treasury’s final rule.⁵ For example, when recipients of SLFRF funds provide award funds to individuals or entities as a result of experiencing a public health or negative economic impact of the pandemic, those receiving such funding are beneficiaries of the funds. In contrast, when recipients provide award funds to an entity to carry out a program in response to the public health emergency or its negative economic impacts, the entities receiving such funding are subrecipients.

Treasury requires recipients to report detailed information in the Treasury reporting portal as part of the Project and Expenditure Report regarding subrecipients that receive subawards of \$50,000 or more and certain beneficiaries that receive direct payments of \$50,000 or more in SLFRF funds. Requirements for this reporting can be found in the [Compliance and Reporting Guidance](#) (pg. 21).

Recipients are not required to separately identify payments to specific individuals receiving funds as beneficiaries in the Project and Expenditure Report. Those funds must be reported in the aggregate as part of the “Payments to Individuals” section.

As in the case of reporting under the Coronavirus Relief Fund, information on both beneficiaries and subrecipients will be collected in a single form in the Project and Expenditure Report.

13.14. Do recipients need to report subrecipient information for the revenue loss eligible use category?

No. Treasury is not collecting subaward data for projects categorized under Expenditure Category Group 6 “Revenue Replacement.” Treasury has determined that there are no subawards under this eligible use category. The definition of subrecipient in the Uniform Guidance provides that a subaward is provided for the purpose of “carrying out” a portion of a federal award. Recipients’ use of revenue loss funds does not give rise to subrecipient relationships given that there is no federal program or purpose to carry out in the case of the revenue loss portion of the award.

13.15. Which requirements of the Uniform Guidance apply to revenue loss funds?

Under the statute and the final rule, recipients may use SLFRF funds for the provision of government services up to the amount of their revenue loss due to the pandemic. Under the final rule, recipients may either calculate their revenue loss amount using a formula provided in the rule or elect up to a \$10 million “standard allowance” of revenue loss over the life of the program. Recipients have considerable flexibility to use SLFRF revenue loss funds on activities to address the diverse needs of their communities, as discussed in FAQ 3.2, but may not use the funds for the following ineligible uses:

- Offset a reduction in net tax revenue (applicable to states and territories)
- Make a deposit into a pension fund (applicable to all recipients except Tribes)

⁵ Coronavirus State and Local Fiscal Recovery Funds, 87 FR 4338, 4394.

- Service debt or replenish financial reserves (e.g., “rainy day funds”) (applicable to all recipients)
- Satisfy settlements and judgments (applicable to all recipients)
- Fund programs, services, or capital expenditures that include a term or condition that undermines efforts to stop the spread of COVID-19 (applicable to all recipients)

In-depth descriptions of the ineligible uses can be found in the “Restrictions on Use” section of the [Coronavirus State and Local Fiscal Recovery Funds: Overview of the Final Rule](#).

The SLFRF award terms and conditions provide that the requirements of the Uniform Guidance, 2 C.F.R. Part 200, apply to SLFRF awards other than such provisions as Treasury may determine are inapplicable to the award and subject to such exceptions as may be otherwise provided. The 2022 Compliance Supplement also provided that the requirements of 2 C.F.R. Part 200 are applicable unless stated otherwise. As such, recipients are required to follow Subparts A, B, C, and F of the Uniform Guidance for expenses categorized under Expenditure Category 6 “Revenue Replacement.” However, given the purpose and very broad scope of eligible uses of the revenue replacement funds, only a subset of the requirements in Subparts D and E of the Uniform Guidance apply to recipients’ use of such funds. The applicable requirements are listed below. In general, these requirements provide that recipients should not deviate from their established practices and policies regarding the incurrence of costs, and that they should expend and account for the funds in accordance with laws and procedures for expending and accounting for the recipient’s own funds.⁶ Recipients’ use of revenue replacement funds remains subject to the other applicable requirements of the SLFRF program, including among other things the deadlines for obligations and expenditures and the application of federal antidiscrimination requirements.

Uniform Guidance Subpart D and E Requirements Applicable to Revenue Loss Funds Used for the Provision of Government Services

Subpart D Post Federal Award Requirements

- 200.300 Statutory and national policy requirements.
- 200.302 Financial management.
- 200.303 Internal controls.
- 200.328 Financial reporting.
- 200.329 Monitoring and reporting program performance.
- Record Retention and Access (2 C.F.R. 200.334 – 200.338)
 - 200.334 Retention requirements for records.
 - 200.335 Requests for transfer of records.
 - 200.336 Methods for collection, transmission, and storage of information.
 - 200.337 Access to records.
 - 200.338 Restrictions on public access to records.

⁶ Cf. 2 CFR 200.302(a), 2 CFR 200.404(e).

- Remedies for Noncompliance (2 C.F.R. 200.339 – 200.343)
Note: These sections will apply to Treasury’s administration of the funds. Because the revenue loss eligible use category does not give rise to subawards, as discussed in FAQ 13.14, recipients will not be in a position to apply these provisions with respect to subrecipient relationships.
 - 200.339 Remedies for noncompliance.
 - 200.340 Termination.
 - 200.341 Notification of termination requirement.
 - 200.342 Opportunities to object, hearings, and appeals.
 - 200.343 Effects of suspension and termination.
- 200.344 Closeout.
Note: This section will apply to Treasury’s administration of the funds. Because the revenue loss eligible use category does not give rise to subawards, as discussed in FAQ 13.14, recipients will not be in a position to apply this provision with respect to subrecipient relationships.
- 200.345 Post-closeout adjustments and continuing responsibilities.
Note: This section will apply to Treasury’s administration of the funds. Because the revenue loss eligible use category does not give rise to subawards, as discussed in FAQ 13.14, recipients will not be in a position to apply this provision with respect to subrecipient relationships.
- 200.346 Collection of amounts due.

The program income requirements of 2 CFR 200.307 do not apply under revenue loss eligible use category. As such, recipients may maintain program income, which will not be considered an addition to the federal award.

Consistent with the Uniform Guidance, if SLFRF is to be used to cover a cost incurred by a recipient, the cost must be one that is allowable. In determining whether a cost is allowable for purposes of funds used under the revenue loss eligible use category, only the following factors and requirements apply:

Subpart E – Cost Principles

- 200.400(a) - (c), and (e) Policy guide.
- 200.403(a), (c), (d), (g), and (h) Factors affecting allowability of costs.
- 200.404(e) Reasonable costs.

13.16. What are the use and disposition requirements for assets purchased with SLFRF funds?

SLFRF funds may be used to acquire real and personal property, supplies, and equipment. For example, a recipient may use SLFRF funds to, among other things, construct or renovate affordable housing, childcare facilities, schools, and hospitals under the eligible use category for responding to the public health emergency or its negative economic impacts pursuant to Treasury’s implementing Final Rule, 31 CFR 35.6(b), and to make investments in water, sewer, and broadband infrastructure pursuant to Final Rule, 31 CFR 35.6(e).

Except for property, supplies, or equipment acquired using revenue loss funds, recipients must follow the applicable provisions of the Uniform Guidance regarding property standards (2 CFR 200.310-316), subject to the requirements set out in this FAQ.

During the period of performance, a recipient may use property, supplies, or equipment purchased or improved with SLFRF funds for a purpose other than the purpose for which it was purchased or improved if such other purpose is also consistent with the eligible use requirements. If a recipient changes the use of an asset to an ineligible use or sells the asset prior to the end of the period of performance, then the recipient must follow the disposition procedures in the Uniform Guidance. *See* 2 CFR 200.311, 200.313, 200.314, and 200.315.

After the period of performance, the property, supplies, or equipment must be used consistent with the purpose for which it was purchased or improved or for any other eligible purpose in the same category as the purpose reported to Treasury as of the final reporting period, as set forth in the table below.

Category	Use Requirements
Public Health and Assistance to Households and Individuals	Property, supplies, or equipment last reported as being used to respond to the public health impacts of the public health emergency, as outlined in 31 CFR 35.6(b)(3)(i), or being used for the provision of services to households provided in 31 CFR 35.6(b)(3)(ii)(A), are authorized to fulfill any eligible use of funds provided in these subparagraphs of the Final Rule.
Assistance to Small Businesses, Nonprofits, and Impacted Industries	Property, supplies, or equipment last reported as being used for the provision of services to small businesses, nonprofits, and impacted industries outlined in 31 CFR 35.6(b)(3)(ii)(B)-(D) are authorized to fulfill any eligible use of funds outlined in the public health and negative economic impacts eligible use category.
Water, Sewer, or Broadband Infrastructure	Property, supplies, or equipment last reported as being used to make investments in water, sewer, or broadband infrastructure pursuant to 31 CFR 35.6(e) are authorized to fulfill any eligible use of funds outlined in the water, sewer, and broadband infrastructure eligible use category.
Government Services/Revenue Loss	Property, supplies, or equipment acquired with revenue loss funds are exempt from the use and disposition requirements of the Uniform Guidance, regardless of award size.
Premium Pay	N/A

If an asset's use shifts within the parameters of the eligible purpose according to this table after the period of performance, no repayment would be required. For example, converting a hospital to a behavioral health facility would qualify as being used for the eligible purpose because both expenditures respond to the public health impacts of the public health emergency, as outlined in 31 CFR 35.6(b)(3)(i), so reimbursement to Treasury would be unnecessary.

If an asset's use shifts outside the parameters of the eligible purpose according to this table after the period of performance, then the recipient or subrecipient must follow the disposition procedures in the Uniform Guidance. *See* 2 CFR 200.311, 200.313, 200.314, and 200.315.

Recipients are responsible for being able to substantiate their determinations on whether the use of an asset is authorized and maintain a record of that determination in accordance with the requirements set forth in the financial assistance agreement accepted in connection with their award. Recipients are not required to seek or obtain the approval of Treasury prior to changing the use within the parameters of the authorized purpose.

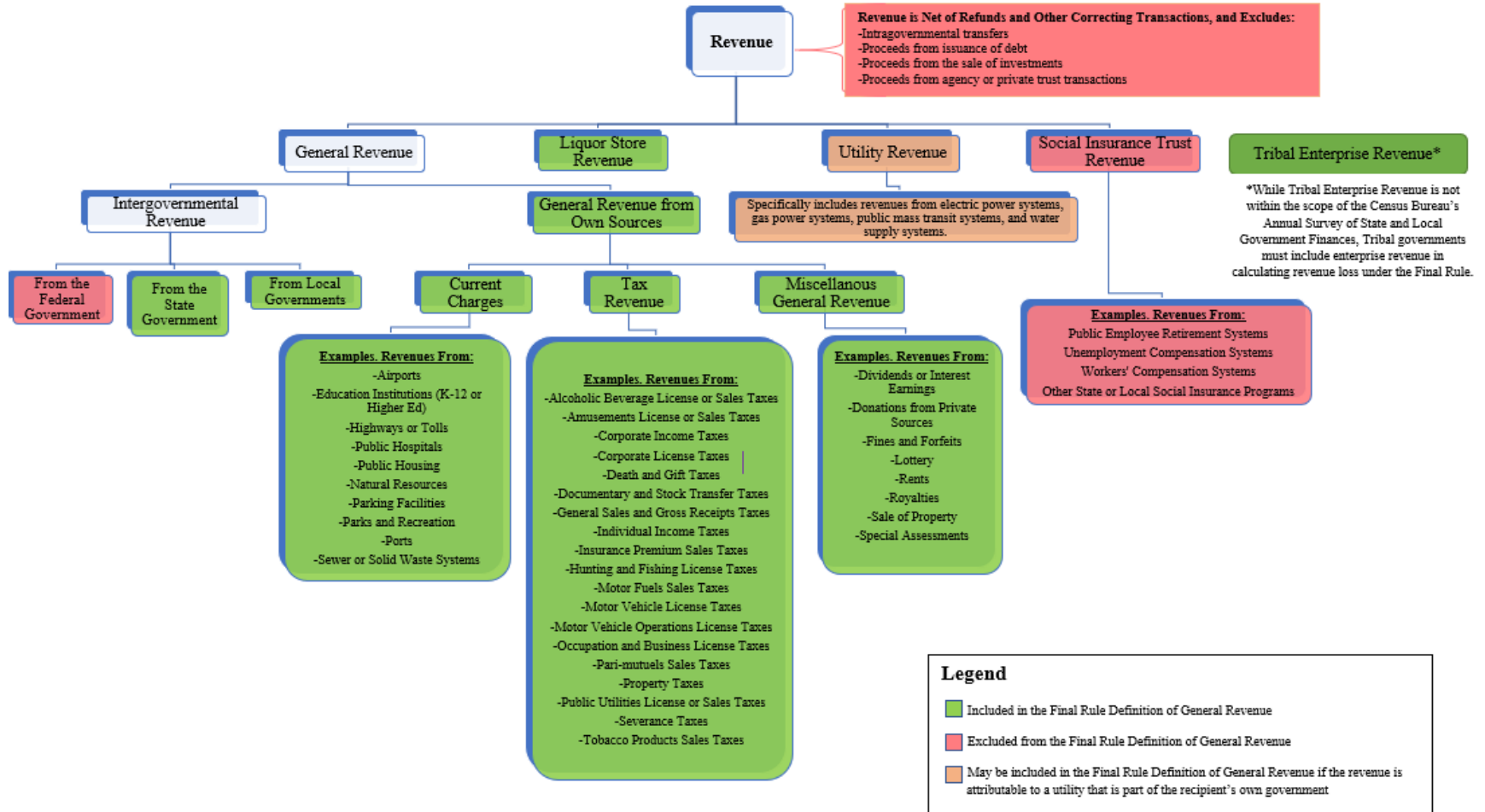
13.17. In the definition of “obligation” in the final rule, what does Treasury mean by “similar transactions that require payment?”

As stated in the final rule, obligation means “an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.” See 31 CFR 35.3.

As contemplated by this definition, Treasury recognizes that recipients may obligate funds through means other than contracts or subawards, for example in the case of payroll costs. In these circumstances, recipients must follow state or local law and their own established practices and policies regarding when they are considered to have incurred an obligation and how those obligations are documented. For example, a recipient may have incurred an obligation even though the recipient and its employee may not have entered into an employment contract.

Appendix

Final Rule Definition of General Revenue Within the Census Bureau Classification Structure of Revenue



Source: [U.S. Bureau of the Census Government Finance and Employment Classification Manual, 2006; Annual Survey of State and Local Government Finances](#)



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CLERK OF THE CLERK
ORANGE COUNTY
BOARD OF SUPERVISORS

Day Chaffee

542I

MEMORANDUM

To: Clerk of the Board

From: Vice Chairman Donald P. Wagner, Third District

Date: October 13, 2022

RE: Supplemental Item for October 18, 2022

October is Employment Disabilities Month. A combination of staff experience and research with local nonprofits dedicated to serving the intellectual and developmental disabilities (IDD) community revealed that many service providers permanently closed during the pandemic; existing providers currently have waitlists for job services. Additional barriers to employment for people with IDD were also identified, including, job training/placement programs and transportation.

Currently, the shortage of service providers for job development and coaching services has overwhelmed the referral system to Best Buddies, which had to close with a waitlist of over 100 people. Considering the Board's recognition of Employment Disability Month and our shared commitment to increasing equality in the workplace, I ask that this supplemental item be added to the October 18, 2022 Board of Supervisors Meeting.

1. Approve the appropriation of \$15,000 from the Third District's discretionary funds to Best Buddies Orange County to be allocated towards a Pre-Employment Transition Services vocational training program in Orange County's Third District and for transportation needs for participants to get to and from their interviews and jobs.
2. Find under Government Code section 26227 that this expenditure is necessary to meet the social needs of the population.



County Executive Office

Memorandum

October 5, 2012

To: Robin Stieler, Clerk of the Board

From: Frank Kim, County Executive Officer

Frank Kim
Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2022.10.05 16:44:34
-07'00'

Subject: Request for Supplemental Closed Session on October 18, 2022

SCS2

Accordingly, please prepare the Agenda item to read:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR – County Executive Office requests a Closed Session pursuant to Government Code Section 54956.8, to confer with its real property negotiator.

Property Location: 1725 West 17th Street, Santa Ana, California

County Negotiator: Thomas A. Miller, Chief Real Estate Officer

Negotiating Party: 17th Street Partners, LLC

Under Negotiation: Terms and Value of Future Lease

Recommended Action: Conduct Closed Session

cc: Members, Board of Supervisors
Chief Executives
Leon Page, County Counsel

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2022 OCT -6 AM 7:51
CLERK OF THE BOARD
ORANGE COUNTY
COUNTY OF ORANGE



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS-3
October 18, 2022

MEMORANDUM

October 11, 2022

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, October 18, 2022, to discuss with the Board the status of existing litigation and anticipated, related litigation, pursuant to paragraphs (1) and (2) of subsection (d) of Government Code section 54956.9.

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL –
EXISTING AND ANTICIPATED LITIGATION Pursuant to
Government Code Section 54956.9, (d)(1) and (d)(2).
Number of Cases: Two, including *William Buck Johns, et al., v.
County of Orange*, Orange County Superior Court Case No. 30-
2022-01281155

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

Leon J. Page

Digitally signed by Leon J. Page
DN: cn=Leon J. Page, o=County of
Orange, ou=County Counsel,
email=leon.page@coco.ocgov.com, c=US
Date: 2022.10.11 16:11:55 -0700

RECEIVED
2022 OCT 11 PM 4:42
CLERK OF THE BOARD OF SUPERVISORS
ORANGE COUNTY
BOARD OF SUPERVISORS

LJP:jb

cc: Members of the Board of Supervisors
Frank Kim, CEO



RECEIVED

2022 OCT 12 AM 10:28

CLERK OF THE BOARD
COUNTY OF ORANGE

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 4
October 18, 2022

M E M O R A N D U M

October 12, 2022

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session to be held on Tuesday, October 18, 2022, for the Board to consider the possible initiation of litigation pursuant to Government Code section 54956.9(d)(4).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL –
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
pursuant to Government Code section 54956.9(d)(4).
Number of Cases: One Case

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

MDS:LJP:jb

cc: Members of the Board of Supervisors
Frank Kim, CEO