

County of Orange, OC Public Works

MA-080-26011556

Power Engineering Construction Company

COUNTY OF ORANGE

JOB ORDER CONTRACT (JOC) MA-080-26011556

FOR

FLOOD CONTROL AND BRIDGE MAINTENANCE SERVICES

This Job Order Contract **MA-080-26011556** for Flood Control and Bridge Maintenance Services ("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 ("County"), Orange County Flood Control District, a body corporate and politic ("District"), and **POWER ENGINEERING CONSTRUCTION COMPANY**, ("Contractor") which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, County, District, and Contractor are entering into this Contract for Flood Control and Bridge Maintenance Services under a Usage Contract; and,

WHEREAS, the District relies on County staff to carry out its duties pursuant to the Orange County Flood Control District Act, Water Code App. §§ 36-1 et seq., and County staff may request Contractor to perform services under this Contract on behalf of District; and,

WHEREAS, County solicited Flood Control and Bridge Maintenance Services as set forth herein, and Contractor has represented that it is qualified and capable to provide Flood Control and Bridge Maintenance Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Flood Control and Bridge Maintenance 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. A-E: The Architect or Engineer or his authorized representative retained by the County to design the Work.
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.

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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 Job Order. 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 in writing. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific Job Order, and these items and have accepted and approved by the County
9. Job Order: A written order issued by the County instructing Contractor to complete the Detailed Scope of Work within the Task Order Completion Time for the Task Order Price. Work may consist of one or more Task Orders.
10. Job Order Authorization (JOA): Issued by County to indicate the acceptance of Quote. Must be issued prior to issuance of a Notice to Proceed.
11. Job Order Notice To Proceed (NTP): The document prepared by the County, based on the approved Job 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.
12. Job Order Quote (Quote): Contractor's irrevocable offer to perform Work associated with a Job Order and refers to the Contractor prepared document quoting an estimated price and schedule for the completion of a Detailed Scope of Work. The Contractor's Quote must be on forms provided by the County and in an electronic version compatible with the County's systems. The Quote may also contain approved drawings, Work schedule, permits, or other such documentation as the County might require for a specific Job Order.

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13. Joint Scope Meeting: A meeting at the Job Order location, attended by the Contractor and County and any other interested parties to outline the Scope of Work for the Task.
14. 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.
15. Normal Working Hours: means between the hours of 7:00 AM to 5:00 PM, Monday through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.
16. 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 Saturday, Sunday, and County holidays.
17. Pre-Priced Task: a task described in, and for which a unit price is set forth in the CTC.
18. Project: The Work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual Job Orders.
19. Request for Quote (RFQ): The County's Request for Quote for a specific Job Order.
20. Stormwater 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.
21. Supplemental Job Order: A secondary Job Order developed after an initial Job Order has been issued for the purpose of supporting the initial Job Order.
22. Work: All of the terms and conditions set forth in the Contracts, including the various separately identifiable parts thereof to be furnished thereunder. The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, permits (if applicable), facilities, utilities, transportation, manuals, warranties, training, and the like necessary for Contractor to faithfully perform and complete all of its obligations under Contract.

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1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide Flood Control and Bridge Maintenance Services under a Usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** Following the Contract's award by the Board of Supervisors, this Contract shall become effective upon the date of execution of all necessary signatures ("Date of Commencement"); and shall be effective for one (1) year from the Date of Commencement or until the maximum Contract amount is expended, whichever occurs first; or unless otherwise terminated.
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. OC Public Works 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 OC Public Works, 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 Job Orders. The County may utilize the services of an Architect, Engineer, and or Consultant in relation to some, but not all Job 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.

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- 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.
 - J. 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.
 - K. 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.
 - L. 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.
 - M. County Contract Administrator will establish procedures to be followed for processing all submittals, Change Orders, Invoices, other project reports, documentation and test reports.
 - N. County Project Manager will issue Job Order if required.
 - O. County Project Manager will review and process all Invoices by the Contractor.
5. **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. Superintendent: The Contractor shall maintain on site, at all times during the construction activities, a dedicated competent Superintendent. 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

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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 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.

If Contractor elects to appoint a Contractor's Project Manager, all relevant provisions of the above paragraph shall also apply to Contractor's Project Manager. If Contractor elects to not appoint a Contractor's Project Manager, any references to "Contractor's Project Manager" in this Contract shall be deemed to be referring to Superintendent.

Any worker found by the County Project Manager to be incompetent, intemperate, troublesome, disorderly, or otherwise objectionable, or who fails to perform the Work properly and acceptably, shall be immediately removed from the worksite by the Contractor and shall not be re-employed in the performance of the Work.

- C. 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.
- D. History Profiles: The Contractor shall provide County Project Manager with complete work history profiles of management staff associated with this Project for County Project Manager review.
- 6. **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.
- 7. **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.
- 8. **Conflict of Interest – Contractor's Personnel**: Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor, Contractor's officers, directors, employees, agents, and subcontractors associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and

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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 from acting in the best interests of County.

Contractor shall notify County, in writing, of any potential or actual conflicts of interest between Contractor and County that may arise prior to, or during the period of, Contract performance, including, but not limited to, whether any known County public officer's child is an officer or director of, or has an ownership interest of ten (10) percent or more in, Contractor. While Contractor will be required to provide this information without prompting from County any time there is a change regarding conflict of interest, Contractor must also provide an update to County upon request by County.

9. **Conflict of Interest – County Personnel:** County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
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 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

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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 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

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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 or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County 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 Job 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.

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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. He 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. He 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. He shall adequately protect adjacent property as provided by law and the Contract documents, and shall maintain reasonable security of the site at all times. He shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to OC Public Works. Contractor's and subcontractors' employees shall possess means of identification at all times as required by OC Public Works 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. He shall so act if directed or instructed by OC Public Works. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

OC Public Works 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 to receive such notice from OC Public Works shall not relieve the Contractor of responsibility.

If the Contractor fails or refuses to comply promptly, OC Public Works 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.

Contractor shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("Contractor Safety Responsibilities") and submit a copy of its Injury and Illness Prevention Program (IIPP), Jobsite Safety Inspection Checklist, and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. Contractor will notify County Project Manager of any revisions to the Safety-Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). Contractor shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.

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Contractor is required to provide a Safety Data Sheet (SDS) compliant with California Code of Regulations, Title 8, Section 5194, for each hazardous substance that is provided, used or created as part of the goods or services provided by Contractor to County. The SDS for each substance must be sent to either the County Project Manager, as specified in the "Notices" provision of this Contract, or to the place of shipment or provision of goods/services.

22. **Responsibility For Damages Or Injury:** The County of Orange, Orange County Flood Control District, and their 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 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 hold 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 OC Public Works. 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.

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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 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 work 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

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10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work 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 work pursuant to Section 1725.5.

Any job 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, no less than Forty Dollars (\$40) or whatever higher amount as determined by the Labor Commissioner 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.

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- D. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five 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 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 \$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 hours of labor constitute a legal day's Work, and forty 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 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

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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 tenders 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, including, but not limited to, the amount withheld under Attachment B, Paragraph V of the 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.

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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 Job 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 Job Order if applicable.

Schedule for Liquidated Damages

<u>Job Order price</u>	<u>Liquidated damages per day</u>
Less than \$200,000	\$2,800
\$200,000 to \$500,000	\$3,600
\$500,000 to \$1,000,000	\$3,600
\$1,000,000 to \$2,000,000	\$4,200
\$2,000,000 to \$5,000,000	\$5,200

- A. The applicability of liquidated damages shall be clearly noted on the Request for Quote for each Job Order. No liquidated damages shall apply if not noted on the Request for Quote. 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. County may, in writing, require the Contractor to remove from the Work

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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 County not to conform to the Contract requirements, unless in the public interest County 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. Subcontractors:

- A. No performance of this Contract or any portion thereof may be subcontracted or otherwise delegated by Contractor, in whole or in part, without first obtaining the prior express written consent of County. Any attempt by Contractor to subcontract or delegate any performance of this Contract without the prior express written consent of County shall be invalid and shall constitute a material breach of this Contract, and any attempted assignment or delegation in derogation of this paragraph shall be void.
- B. In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the agreement between Contractor and subcontractor, and any agreement between Contractor and a subcontractor shall incorporate by reference the terms of this Contract. Contractor shall remain responsible for the performance of this Contract and indemnification of County notwithstanding the County's consent to Contractor's request for approval of a subcontractor. Under no circumstances shall County be required to directly monitor the performance of any subcontractor. All work performed by a subcontractor must be monitored by Contractor and must meet the approval of the County of Orange pursuant to the terms of this Contract.
- C. List of Subcontractors: Contractor shall list all subcontractors, as part of the Quote, as provided in Attachment A, ordering procedures.
- D. Licensed Subcontractors: Each subcontractor selected for the Work shall be licensed in the State of California in his particular field.
- E. Transactions: Transactions with subcontractors shall be made through the Contractor except when in emergency situations the General Contractor is not readily available, in which case detailed instructions will be transmitted to subcontractors directly.

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- F. 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.
- G. 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 Job 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 Job 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 Job 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

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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 Job Order.
- F. Technical Specifications: The Technical Specifications furnished in the CTC Catalog 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.

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:
 - i. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
 - ii. 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.

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- iii. 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.
- iv. 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 section 17 above, and Articles 32 and 46, 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 Job 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.
- 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

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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 Job 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 into the Job Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.
- H. Employee Acceptability: If required by a specific Job 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 Job 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 of 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 Job 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:

- A. In the event of a dispute between the Parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, the Contractor shall continue the Work diligently to completion as directed by OC Public Works. If the dispute is not resolved, the Contractor agrees he will neither rescind this Contract nor stop the progress of the Work.

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- B. For this section a “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 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; 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; payment of an amount that is disputed by the public entity.

Pursuant to Public Contract Code Section 9204:

(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 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 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 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 30 days for settlement of the dispute.

(B) Within 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 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 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each

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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.

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.

- C. All construction claims of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less between the Contractor and the County shall be resolved in accordance with the provisions of Division 2, Part 3, Chapter 1, Article 1.5 of the Public Contract Code of the State of California. Contractor's sole remedy for

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construction claims of more than Three Hundred Seventy-Five Thousand Dollars (\$375,000) will be to submit such controversy to determination by a court of the State of California in Orange County, California, having competent jurisdiction of the dispute, after the project has been completed and not before.

- D. Notwithstanding the foregoing, with respect to any dispute involving a claim by the Contractor for additional compensation, Contractor shall submit such claim in writing to OC Public Works promptly as the alleged facts giving rise to, or the alleged bases for, the claim become known to the Contractor; any such claim not promptly so submitted to OC Public Works shall be deemed waived; and in no event shall a claim for additional compensation be asserted or be assertible after completion or cessation of the Work.
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: **Sam Tieu**, Contract Administrator
 601 N. Ross St.
 Santa Ana, CA 92701
 714-667-3968
Sam.Tieu@pw.oc.gov

cc: OC Public Works/ Procurement Services
 Attn: **Suchitra Vattyam**
 601 N. Ross Street, 4th Floor
 Santa Ana, CA 92701
 714-667-8829
Suchitra.Vattyam@pw.oc.gov

Contractor: POWER ENGINEERING CONSTRUCTION COMPANY
 Hilary Tigie/ Scott Williams
 1501 Viking Street Suite 200
 Alameda, CA 94501
 (510) 715-0508
estimating@powerengconstruction.com
Williams@PowerEngConstruction.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

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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 OC Public Works 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 report to OC Public Works, 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.
 - B. 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.

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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:
 - i. 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
 - ii. The Contractor, within ten days from the beginning of any such delays (unless OC Public Works grants a further period of time before the date of final payment under the Contract), notifies OC Public Works in writing of the causes of delay.
 - iii. OC Public Works shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay

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is justified. OC Public Works 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 43 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 affected 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. **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.
56. **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.
57. **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.
58. **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

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performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by subcontractors.

59. Insurance Provisions:

Prior to the provision of services under this Contract, the Contractor agrees to carry 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 current, provide Certificates of Insurance, and endorsements to 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

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 carry 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 SIRs in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Contractor. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this Contract.

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.

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**).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, CEO/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

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minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability Including Products-Completed Operations	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned, and hired vehicles	\$1,000,000 combined single limit
Workers' Compensation	Statutory
Employers' Liability Insurance disease	\$1,000,000 per accident or
Contractor's Pollution Liability with NODS	\$1,000,000 per claims-made, or occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies.
Excess/Umbrella policies must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The Commercial General Liability policy shall not exclude coverage for Explosion, Collapse, or Underground Hazard (XCU).

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 at least as broad.

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 10 04 13 or CG 20 33 04 13, or a form at least as broad naming the ***County of Orange, Orange County Flood Control District, and their elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN CONTRACT.***

2) 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 and Orange County Flood Control District shall be excess and non-contributing.

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3) Products and Completed Operations endorsement using ISO Form CG 20 37 04 13, or a form at least as broad.

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

The Contractor's Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, Orange County Flood Control District its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage which shall state As Required by Written Contract.

2) A primary non-contributory endorsement evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

The Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants.

If the Contractor's Pollution Liability policy(ies) is/are claims-made policy, Contractor shall agree to the following:

1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.

3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, Contractor must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.

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

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Contractor shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to 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 provide copies of acceptable certificates of insurance and endorsements to 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.

60. **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 **total contract amount**, in accordance with *Section 9554 of the Civil Code*, and one surety bond in the amount of the **total contract amount**, guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed the **total contract amount**, the Contractor shall furnish, in a manner acceptable to the County, evidence that the Contractor is bonded to the expected total value of outstanding task orders for both the faithful performance and laborers and material men bonds. Contractor shall not be entitled to, nor shall County authorize, task orders when the total outstanding value of the task orders under this contract exceeds the bond values for which the County is an obligee. Said bonds to be approved by the office of the County Counsel and the County Executive Office of Orange County. Such bonds shall be the forms provided in these specifications and 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.)

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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 OC Public Works, the Contractor shall promptly furnish such additional security as may be required by OC Public Works 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.

61. **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.

62. **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 of Article 75 below, 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.
63. **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.
64. **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.

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65. **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.
66. **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.
67. **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 of the Insurance and Indemnification section, 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.
68. Contractor shall remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the Contract, and shall provide annual confirmation of current and active status to County through the term of the Contract. **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.
69. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
70. **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.
71. **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.
72. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

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73. **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.
74. **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.
75. **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.
76. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County of Orange, Orange County Flood Control District, and their 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, County, and/or District by a court of competent jurisdiction because of the concurrent active negligence of County, District, 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 or obligations created elsewhere in this Contract.
77. **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.
78. **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

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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 Job 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.

79. **Campaign Contribution Disclosure:** Contractor agrees to comply with Government Code Section 84308. Contractor further agrees to disclose to the County any contribution made to any members of the Board of Supervisors or County Agency Officers by Contractor, Contractor's agent or lobbyist, or, if applicable, any subcontractor(s) for the twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

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Power Engineering Construction Company

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

**POWER ENGINEERING
CONSTRUCTION COMPANY,**
a California Corporation

Date: 6/15/2026 | 4 :15 PM CDT

DocuSigned by:
David Mik
By _____
Signature
David Mik 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: 6/15/2026 | 3:16 PM CDT

DocuSigned by:
Hilary Tigue
By _____
Signature
Hilary Tigue 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; and,
**ORANGE COUNTY FLOOD CONTROL
DISTRICT,**
a body corporate and politic

Date: _____

By _____

Print
Name _____

Title _____

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

Signed by:
William Mule
By _____
Deputy

Date: 6/16/2026 | 8:07 AM PDT

County of Orange, OC Public Works**MA-080-26011556****Power Engineering Construction Company****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 Flood Control and Bridge Maintenance 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 and the District such as flood control channels, bridges, and other similar and/or related infrastructure, including but not limited to embankments, structural work, storm drains, pump stations, regional park recreational trails, roadways, traffic signals, and park facilities. Flood Control and Bridge Maintenance 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 2026 (to be available for download after the Pre-Bid Meeting).
- B. All other requirements identified specifically in a Job Order Detailed Scope of Work, which include but not limited to drawings, supplemental specifications, as-built records, sketches, written scope narratives, standard specification from other local, state and federal agencies.
- C. Standard Plans for County of Orange, Standard Specifications for Public Works Construction, 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.
- D. Secured Facilities: The Contractor may be required to have their employees, subcontractors and/or a 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.

II. PERFORMANCE REQUIREMENTS:

- A. There is no guaranteed minimum amount of work which will be ordered under this Contract.
- B. This is a Contract for work specified in individual Job Orders. 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 Job 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 Job Order. Contractor shall self-perform Contract Work amounting to at least 50% of the total Job Orders Authorized to date, unless self-performance requirements are further reduced as specified by the County for an individual Job Order.
- C. 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 Job 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

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specified in the Contract up to and including the quantity designated in the Job Orders issued as the maximum designated in the Contract.

- D. Contractor being deemed non-responsive to a Request for Quote in accordance with the ordering procedures clause will be documented by a written notice from the County to the Contractor. The County may cancel the Request for Quote from the Contractor and solicit another Contractor. Pre-qualification for future JOC contracts will evaluate Contractor responsiveness on County Job Order Contracts within 5 years. Contractors will be deemed not qualified for any of the following prior performance records:
- i. Contractors deemed non-responsive to a Request for Quote for any County Job Order Contracts receiving more than one (1) written notice, unless the Contractor provides the County a letter of commitment for the duration of the Contract term describing available resources, self-performing expertise, and responsive/responsible personnel dedicated to managing this Contract with the County, if awarded.
 - ii. Contractors deemed non-responsive to a Request for Quote for any County Job Order Contracts receiving more than one (1) written notice in successive, subsequent years under Contract with the County.
 - iii. Any County Job Order Contracts terminated for cause.

III. ORDERING PROCEDURES:**A. Contractor Selection:**

The County may award an individual Task Order to any awarded contractor. Selection of the contractor and award of the Task Order will comply with established County procedures and based on one or more of the following criteria:

- i. Rotational selection among all contractors, unless otherwise determined by the County.
- ii. Evaluation of past and current performance on Task Orders of a similar nature and type and size of work/project, construction management challenges, schedule performance, design management requirements, etc.
- iii. Balancing of workload (Task Order dollar volume and construction backlog) among contractors.
- iv. Management of Task Order dollar volume within bonding limitations of the contractor.
- v. Price, as it relates to the County's independent cost estimate.
- vi. Contractor's responsiveness to the County on Task Orders.
- vii. Other appropriate criteria as deemed in the best interest of the County.

B. Joint Scope Meeting and Job Order Development:

The County will issue, for each project, a Brief Scope of Work and Joint Scope Meeting 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

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include discussion and establishment of the following:

1. Detailed Scope of Work
2. Definition and refinement of requirements
3. Existing site conditions
4. Methods and alternatives for accomplishing Work
5. Requirements for plans, sketches, shop drawing(s), submittals, etc.
6. Tentative duration Work schedule
7. Preliminary quantity assumptions/estimates
8. Staging areas and site access
9. Special conditions regarding unique facility operations
10. Safety requirements
11. Hazardous Materials or site conditions
12. Other project requirements

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 for the Contractor, for individual Job Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Quotation.

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 Quote. This Detailed Scope of Work must be submitted within forty-eight (48) hours or a mutually agreed upon time of the Joint Scope Meeting.

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.

C. Request for Quote

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 Quote (RFQ) to the Contractor. The RFQ 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 Quote of Work.

D. Quote Development

The Contractor Quote agrees to be comprised of the following elements:

1. Detailed Cost Quote
 - a. Pre-Priced Work requirements: Pre-Priced Work requirements will

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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 Quote 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 Quote shall include, but not be limited to, 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 Quote 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 Job Order to which they pertain, and may be incorporated into the future 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 shall 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.

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Total for a Non Pre-Priced Task performed with Contractor's Own Forces
 $= (A+B+C) \times \text{Factor of } 1.05$

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 Factor of 1.05.

After being used on three separate Job Orders, the unit price for the Non-Pre-Priced Task may become fixed as a permanent Pre-Priced item, 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.

3. Total Fixed Cost of the Quote

The total fixed cost of the Quote shall be determined by adding the total Quote price offered for Pre-Priced and Non-Pre-Priced Work units.

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 quote, 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

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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 Job 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 Job 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 Quote represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code

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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 Quote amount. Contractors and subcontractors who 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.

Note: Each Job Order Proposal requires a subcontractor list with all the information above.

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 Quote

The Contractor agrees to transmit an electronic copy of the Quote, using the County furnished software, to the County.

8. Complete Quote

By submitting a signed Quote, the Contractor is agreeing to accomplish the Work outlined in the RFQ and the Detailed Scope of Work for that particular Job Order. It is the Contractor's responsibility to include the necessary line items in the Quote prior to submitting it to the County. Errors and omissions in the Quotes shall be the responsibility of the Contractor. All costs associated with preparing Quotes shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual Job Orders.

E. Quote Review

Each Quote 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 subcontractor. 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 Quote is acceptable.

F. Project Approval

The County may issue a Job Order Authorization for the Work, to include the price of the Job Order based on County estimated quantities and the project duration. Contractor agrees that all clauses of this Contract are applicable to any Job Order issued hereunder.

The County reserves the right to reject a Contractor's Quote 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.

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The County reserves the right to issue a unilateral Job Order authorization for the Work if a Quote price cannot be mutually agreed upon. This is based upon unjustifiable quantities in the sole opinion of the County.

The County also reserves the right not to issue a Job 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 Quote expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

G. Quote Time Requirements

1. Quote Submittal

The Contractor agrees to respond to a Request for Quote within forty-eight (48) hours. Contractor's response shall confirm receipt of the Request for Quote, and a mutually agreed upon date for submittal of Contractor's detailed price Quote.

The Contractor agrees to make a thorough analysis of each Request for Quote 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 Quote due date unless mutually agreed to by the County.

2. Quote Review

The Contractor's project manager or agent agrees to be available for Quote review meetings within twenty-four (24) hours of being notified by the County (via fax, e-mail, telephone, etc). After review of the Quote, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

3. Quote Modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Quote by submitting a second, revised Quote. The Contractor agrees to submit the revised Quote within forty-eight (48) hours of the initial Quote review meeting, unless otherwise specified in writing. Upon review of the revised Quote, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Quote within twenty-four (24) hours. No new line items may be added to the revised Quote, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Quote review.

4. Enforcement of Time Requirements

The Quote time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Quote. The County may cancel the Request for Quote from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

County of Orange, OC Public Works**MA-080-26011556****Power Engineering Construction Company****A. Job Order Authorization (JOA)**

Upon approval of the Scope of Work and the Contractor's Quote, the County will issue a Job Order Authorization to the Contractor. Once the Job Order Authorization 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 Job 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 Job 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 Job 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 separate Job Order.

B. Notice to Proceed (NTP)

Following the JOA and purchase order issuance, the County will issue a Notice to Proceed (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 Job 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, Quotation, 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

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The Contractor agrees to provide continuous on-site supervision on each Job Order, while progress on the project is being accomplished. The Contractor's Project Manager will ensure:

1. Coordination and providing supervision to all subcontractor 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 submitting copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00AM 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 shall 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 Job 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 subsequent Job 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 Quote. 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 Job 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

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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. Permits issued by jurisdictional regulatory agencies,
- B. Job Orders (including Scope of Work)
- C. County - Contractor Contract
- D. Supplemental Agreements
- E. Addenda and Notices to Bidders
- F. Approved Project Plans/Drawings/Specifications (detailed drawings take precedence over general drawings.
- G. Construction Task Catalog®
- H. County Standard Plans
- I. Referenced Specifications/Standard Plans
 - i. Standard Specifications for Public Works Construction
 - ii. Caltrans Standard Specifications
 - iii. Manufacturer's 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).
- B. The Contractor will be required to obtain a city business license to perform the Work

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in the appropriate city, as specified in the Job 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 manufacturers 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 Job 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 Job 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 to California Department of Fish and Wildlife, 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 Job Orders, which will be identified in the Detailed Scope of Work. Resources regarding implementation of BMPs during construction is available to view at OC Environmental Resources' website at the following link: <https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/best-management>. Additional resources, such as the California Stormwater Quality Association (CASQA) Construction BMP Handbook, are available for purchase at www.casqa.org.

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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 Job Order, coverage under the following permits may be required :
1. NPDES Dewatering Permit
 2. NPDESNPDS Municipal Storm Water Sewer System Permit
 3. NPDES General Construction Permit
 4. Any site-specific permits identified by County
- N. If applicable, coverage under the NPDES Dewatering Permit shall be provided in accordance with the following:
1. Construction Related Dewatering & De Minimis/Minimus Discharges, Santa Ana Region:
 - a. The Santa Ana Regional Water Quality Control Board has issued two NPDES permits to regulate waste discharge requirements for discharges that pose an insignificant (De Minimis) threat to surface water quality. Order No. R8-2020-0006 (NPDES NO. CAG998001) regulates various wastewater discharges, including construction dewatering wastes and diverted stream flows, within North Orange County. Additionally, the Santa Ana Regional Water Quality Control Board has issued Order No. R8-2019-0061 (NPDES No. CAG918002), for De Minimis discharges within the Newport Bay Watershed,
 - b. The Contractor is hereby directed to read and thoroughly comply Order Nos. R8-2020-0006 and .
 - c. A copy of the Order No. R8-2020-0006 may be found at https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2020/R8-2020-0006.pdf
 - d. A copy of Order No. R8-2019-0061 may be found at https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2019/r8-2019-0061.pdf
 2. Construction Related Dewatering, San Diego Region
 - a. The San Diego Regional Water Quality Control Board has issued Order No. R9-2015-0013 (NPDES No. CCAG919003) for general waste discharge requirements for groundwater extraction discharges to surface waters. This Order includes requirements for groundwater extraction discharges, including construction dewatering.
 - b. The Contractor is hereby directed to read and thoroughly comply Order No. R9-2015-0013.
- O. A copy of Order No. R9-2015-0013 may be found at https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2020/R8-2020-0006.pdf National Pollutant Discharge Elimination System (NPDES) Requirements (MS4 Permit)

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- 1) County is subject to two Municipal NPDES Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). Both require County to prepare and update a Stormwater Program Local Implementation Plan (LIP), which details how compliance with the requirements of the MS4 Permits will be maintained.

Contractor is directed to read thoroughly and comply with all requirements of Section A-8, Construction, of the County's LIP. A copy of Section A-8 of the LIP may be found on the internet at: <https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/unincorporated>
<https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/oc-watersheds/documents/drainage-area-management-plan-9>

- 2) Best Management Practices

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 ("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).

Contractor shall comply with all water quality ordinances, permits and regulations. Contractor shall implement appropriate BMPs consistent with County's DAMP/LIP.

Minimum Construction Site/Project Management Measures	
i.	Pollution prevention where appropriate;
ii.	Development and implementation of a site-specific run-off management plan;
iii.	Minimization of areas that are cleared and graded to only the portion of the site that is necessary for construction;
iv.	Minimization of exposure time of disturbed soil areas;
v.	Minimization of grading during the wet season and correlation of grading with seasonal dry weather periods to the extent feasible;
vi.	Limitation of grading to a maximum disturbed area as determined by County before either temporary or permanent erosion controls are implemented to prevent stormwater pollution. County has the option of temporarily increasing the size of disturbed soil areas by a set amount beyond the maximum if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution;
vii.	Temporary stabilization and reseeded of disturbed soil areas as rapidly as feasible;

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viii.	Wind erosion controls;
ix.	Tracking controls;
x.	Non-stormwater management measures to prevent illicit discharges and control stormwater pollution sources;
xi.	Waste management measures;
xii.	Preservation of natural hydrologic features where feasible;
xiii.	Preservation of riparian buffers and corridors where feasible;
xiv.	Evaluation and maintenance of all BMPs, until removed; and
xv.	Retention, reduction, and proper management of all stormwater pollutant discharges on-site to the Maximum Extent Practicable (MEP) standard.
Minimum Erosion and Sediment Controls	
i.	Erosion prevention is to be used as the most important measure for keeping sediment on-site during construction;
ii.	Sediment controls are to be used as a supplement to erosion prevention for keeping sediment on-site during construction;
iii.	Slope stabilization must be used on all active slopes during rain events regardless of the season and on all inactive slopes during the rainy season and during rain events in the dry season; and
iv.	Permanent revegetation or landscaping must be implemented as early as feasible.

- 3) Contractor is responsible for selecting, implementing and maintaining an effective combination of construction BMPs on all projects from the current California Stormwater Quality Association (CASQA) Construction Handbook Web Portal which is available through a subscription service at the following internet link:

<https://www.casqa.org/resources/bmp-handbooks/construction>

Contractor is responsible for complying with all locally enforced water quality-related codes and ordinances. It should be noted there may be multiple agencies with jurisdiction over public right-of-way within the WORK limits, and it is Contractor's responsibility to make sure that activities related to the WORK do not cause violations of local laws

PERMITS

Permits and permit requirements for the National Pollution Discharge Elimination System (NPDES) Program shall be determined before approval of each Task Order and incorporated in the Detailed Scope of Work based on the following applicable permits requirements:

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| SECTION 1 | Permits for WORK with a Disturbed Soil Area of One (1) Acre or Less and Located within Santa Ana Region |
| SECTION 2 | Permits for WORK with a Disturbed Soil Area of One (1) Acre or More and Located within Santa Ana Region |
| SECTION 3 | Permits for WORK with a Disturbed Soil Area of One (1) Acre or Less and Located within San Diego Region |
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County of Orange, OC Public Works

MA-080-26011556

Power Engineering Construction Company

SECTION 1

(Permits for WORK with a Disturbed Soil Area of One (1) Acre or Less

and Located within Santa Ana Region)

1. GENERAL – PERMITS, LICENSES, AND AGREEMENTS

Contractor shall be responsible for identifying and obtaining all construction permits and licenses required for each Task Order. Cost and fees associated with said permits shall be paid in accordance with these Special Provisions.

Contractor shall comply with all rules and regulations included in said permits and licenses. Should Contractor fail to conform to said rules and regulations, County reserves the right to perform the work necessary to conform to the rules and regulations. The cost of such work will be deducted from any funds in the executed Task Order to become due to Contractor.

It is noted that multiple permits are required from the various regulatory agencies. Contractor is to abide by and follow the requirements of such permits.

Copies of the permits shall be given to the County Project Manager prior to the beginning of work.

2. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) REQUIREMENTS (MS4 Permit)

- 4) County is subject to two Municipal NPDES Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). Both require County to prepare and update a Stormwater Program Local Implementation Plan (LIP) which details how compliance with requirements of the MS4 Permits will be maintained.

Contractor is directed to read thoroughly and comply with all requirements of Section A-8, Construction, of the County's LIP. A copy of Section A-8 of the LIP may be found on the internet at:

<https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/unincorporated>

- 5) Contractor is directed to comply with the requirements in Section G-4, "EROSION, SEDIMENT AND CHEMICAL CONTROL PLAN" (ESCCP) of these Special Provisions and shall adhere to these following BMPs:

Minimum Construction Site/Project Management Measures	
xvi.	Pollution prevention where appropriate;
xvii.	Development and implementation of a site-specific run-off management plan;

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xviii.	Minimization of areas that are cleared and graded to only the portion of the site that is necessary for construction;
xix.	Minimization of exposure time of disturbed soil areas;
xx.	Minimization of grading during the wet season and correlation of grading with seasonal dry weather periods to the extent feasible;
xxi.	Limitation of grading to a maximum disturbed area as determined by County before either temporary or permanent erosion controls are implemented to prevent stormwater pollution. County has the option of temporarily increasing the size of disturbed soil areas by a set amount beyond the maximum if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution;
xxii.	Temporary stabilization and reseeding of disturbed soil areas as rapidly as feasible;
xxiii.	Wind erosion controls;
xxiv.	Tracking controls;
xxv.	Non-stormwater management measures to prevent illicit discharges and control stormwater pollution sources;
xxvi.	Waste management measures;
xxvii.	Preservation of natural hydrologic features where feasible;
xxviii.	Preservation of riparian buffers and corridors where feasible;
xxix.	Evaluation and maintenance of all BMPs, until removed; and
xxx.	Retention, reduction, and proper management of all stormwater pollutant discharges on-site to the Maximum Extent Practicable (MEP) standard.
Minimum Erosion and Sediment Controls	
v.	Erosion prevention is to be used as the most important measure for keeping sediment on-site during construction;
vi.	Sediment controls are to be used as a supplement to erosion prevention for keeping sediment on-site during construction;
vii.	Slope stabilization must be used on all active slopes during rain events regardless of the season and on all inactive slopes during the rainy season and during rain events in the dry season; and
viii.	Permanent revegetation or landscaping must be implemented as early as feasible.

- 6) Contractor is responsible for selecting, implementing, and maintaining an effective combination of construction BMPs on all projects from the current California Stormwater Quality Association (CASQA) Construction Handbook Web Portal which is available through a subscription service at the following internet link:

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<https://www.casqa.org/resources/bmp-handbooks/construction>

- 7) Contractor is responsible for complying with all locally enforced water quality-related codes and ordinances. It should be noted there may be multiple agencies with jurisdiction over public right of way within the WORK limits, and it is Contractor's responsibility to make sure that activities related to the WORK do not cause violations of local laws.

3. CONSTRUCTION RELATED DEWATERING & DE MINIMIS DISCHARGES (outside of Newport Bay Watershed)

The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, as amended by Order R8-2010-0062, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimis types of discharges listed in the Santa Ana Regional Board's General De Minimis Permit for Discharges to Surface Waters, Order No. R8-2020-0006, from County owned and/or operated facilities and activities (including construction), **outside of the Newport Bay watershed.**

A copy of the Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:

https://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/orange_county_ms4_permit.html

A copy of the Santa Ana Regional Board's General De Minimis Permit for Discharges to Surface Waters (Order No. R8-2020-0006) may be found on the internet at:

https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2020/R8-2020-0006.pdf

For de minimis 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 County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimis Permit (Order No. R8-2020-0006/2015-0004) for the types of de minimis discharges which are covered.

3.1 TEMPORARY GROUNDWATER & DE MINIMIS DISCHARGES TO SURFACE WATERS (within Newport Bay Watershed)

County has prepared a Santa Ana Regional Water Quality Control Board (SARWQCB)-approved dewatering plan for WORK within the Newport Bay Watershed. Contractor shall plan the construction activities according to the said dewatering plan or Contractor will take full responsibility for revising the plan and resubmitting for approval through the SARWQCB. County will not be held accountable for any delays or costs incurred due to Contractor's voluntary resubmittal process.

For short term groundwater-related and de minimis discharges to surface waters within the Newport Bay Watershed, the Santa Ana Regional Board has adopted Order No. R8-2019-0061. Authorization under this order must be obtained on a project-by-project basis.

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A copy of this Order may be found on the internet at:

https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2019/R8-2019-0061.pdf

Contractor is hereby directed to comply with the requirements as specified therein, the SARWQCB-approved dewatering plan, and as directed by County Project Manager.

Contractor is hereby notified that the County will undertake all reporting, for the dewatering operations only, to the SARWQCB as required by the permit(s) and the related Monitoring and Reporting Program unless otherwise specified. Contractor shall comply with all requests from the County Project Manager for construction and location of sampling stations, construction of settling/stilling basins, and any other mitigation measures required to conform to the Permit and the Monitoring and Reporting Program, and shall consider all requirements of these permits in the Unit Prices for dewatering.

4. COASTAL DEVELOPMENT PERMIT (CDP)

County may have obtained a Coastal Development Permit (CDP), under the California Coastal Act, from the California Coastal Commission (CCC). Contractor is directed to read the CDP and comply with the conditions and requirements in the said permit and keep a hard copy of the permit on the jobsite at all times and be made available to any CCC representative at his/her request.

County of Orange, OC Public Works**MA-080-26011556****Power Engineering Construction Company****SECTION 2**

**(Permits for WORK with a Disturbed Soil Area of One (1) Acre or More
and Located within Santa Ana Region)**

5. GENERAL-PERMITS, LICENSES, AND AGREEMENTS

Contractor shall be responsible for identifying and obtaining all permits and licenses required for each Task Order. Cost and fees associated with said permits shall be paid in accordance with these Special Provisions.

Contractor shall comply with all rules and regulations included in said permits and licenses. Should Contractor fail to conform to said rules and regulations, County reserves the right to perform the work necessary to conform to the rules and regulations. The cost of such work will be deducted from any funds in the executed Task Order to become due to Contractor.

It is noted that multiple permits are required from the various regulatory agencies. Contractor is to abide by and follow the requirements of such permits.

Copies of the permits shall be given to the County Project Manager prior to the beginning of work.

6. CONSTRUCTION RELATED DEWATERING & DE MINIMUS DISCHARGES (Outside of the Newport Bay watershed)

County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, as amended by Order R8-2010-0062, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimis types of discharges listed in the Santa Ana Regional Board's General De Minimis Permit for Discharges to Surface Waters, Order No. R8-2020-0006, from County owned and/or operated facilities and activities (including construction), **outside of the Newport Bay watershed.**

A copy of County's Municipal NPDES Permit (Order No. R8-2009-0030) may be found on the internet at:

https://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/orange_county_ms4_permit.html

A copy of the Santa Ana Regional Board's General De Minimis Permit for Discharges to Surface Waters (Order No. R8-2020-0006) may be found on the internet at:

https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2020/R8-2020-0006.pdf

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For de minimis 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 County's Municipal NPDES Permit (Order No. R8-2009-0030) and the General De Minimis Permit (Order No. R8-2020-0006) for the types of de minimis discharges which are covered.

2.1 TEMPORARYGROUNDWATER & DE MINIMUS DISCHARGES TO SURFACE WATERS (within the Newport Bay watershed)

County will prepare a Santa Ana Regional Water Quality Control Board (SARWQCB)-approved dewatering plan for WORK within the Newport Bay Watershed. Contractor shall plan the construction activities according to the said dewatering plan, or Contractor will take full responsibility for revising the plan and resubmitting for approval through the SARWQCB. County will not be held accountable for any delays or costs incurred due to Contractor's voluntary resubmittal process.

For short term groundwater-related and de minimis discharges to surface waters within the Newport Bay Watershed, the Santa Ana Regional Board adopted Order No. R8-2019-0061. Authorization under this order must be obtained on a project-by-project basis.

R8-2019-0061 .

A copy of the original Order may be found on the internet at:

https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2019/R8-2019-0061.pdf

Contractor is hereby directed to comply with the requirements as specified therein, the SARWQCB-approved dewatering plan, and as directed by County Project Manager.

Contractor is hereby notified that the County will undertake all reporting, for the dewatering operations only, to the SARWQCB as required by the permit(s) and the related Monitoring and Reporting Program unless otherwise specified. Contractor shall comply with all requests from the County Project Manager for construction and location of sampling stations, construction of settling/stilling basins, and any other mitigation measures required to conform to the Permit and the Monitoring and Reporting Program, and shall consider all requirements of these permits in the Unit Prices for dewatering.

7. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) REQUIREMENTS (MS4 Permit)

- 1) County is subject to two Municipal NPDES Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). Both require County to prepare and update a Stormwater Program Local Implementation Plan (LIP), which details how compliance with requirements of the MS4 Permits will be maintained.

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Contractor is directed to read thoroughly and comply with all requirements of Section A-8, Construction, of County's LIP. A copy of Section A-8 of the LIP may be found on the internet at:

<https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/oc-watersheds/documents/drainage-area-management-plan-9>

- 2) Contractor is responsible for complying with all locally enforced water quality-related codes and ordinances. It should be noted there may be multiple cities with jurisdiction over public right of way within the WORK limits, and it is Contractor's responsibility to make sure that activities related to the WORK do not cause violations of local laws.
8. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES WATER QUALITY ORDER NO. 2022-0057-0009-DWQ (CONSTRUCTION GENERAL PERMIT)**

On September 8, 2022, 2009, the State Water Resources Control Board adopted Order No. 2022-00572009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities). Effective September 1, 2023, all dischargers (construction sites where calculated soil disturbance totals 1 acre or more) are required to obtain coverage and comply with this Construction General Permit (CGP).

A copy of this permit and related documents/attachments may be found on the internet at

https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html

Contractor is hereby directed to read and understand all the requirements of this Permit as they relate to the WORK.

County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, as amended by Order R8-2010-0062, from the California Regional Water Quality Control Board, Santa Ana Region, as described above. Section XV, "Municipal Construction Projects/Activities," of the Municipal Permit describes specific compliance with the latest version of the State's CGP within the Santa Ana Region.

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, County Project Manager will electronically submit these documents through the Stormwater Multi-Application, Reporting, and Tracking System (SMARTS) to the State Water Resources Control Board (SWRCB) to obtain coverage under the CGP.

9. **STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

Contractor will be required to implement a site-specific SWPPP, which will be submitted by County Project Manager.

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NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL County HAS RECEIVED A TRACKING NUMBER FROM THE SWRCB.

The SWPPP shall be developed using California Stormwater Quality Association (CASQA) Stormwater Pollution Prevention (SWPPP) Template

The CASQA SWPPP template is available through a subscription service at the following internet link:

<https://www.casqa.org/resources/bmp-handbooks>

County Project Manager may amend the SWPPP as needed during the course of WORK to reflect actual construction progress and construction practices. Contractor shall designate a Qualified SWPPP Practitioner (QSP), as defined by the CGP, who will be responsible for compliance with CGP requirements for WORK at all times.

Contractor's QSP must be on-site to observe BMP installation and approve all SWPPP implementation. Contractor's QSP must be on-site during all required NPDES inspections (weekly, rain events, and quarterly non-storm). Within seventy-two (72) hours from receiving BMP corrections from County Local Agencies and/or SWRCB staff (but only as directed by County Project Manager), Contractor's QSP shall initiate SWPPP modifications in the field as necessary and complete them as soon as possible and prior to predicted rain events. Contractor's QSP shall prepare written reports for the corrective actions and submit them to County Project Manager. All work may be stopped at the County Project Manager's discretion if corrective action is not taken in a timely manner. Any cost/delays incurred due to stopped work will be solely borne by the Contractor.

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, Contractor acknowledges that he has read and understands the requirements of the CGP.

Contractor is hereby notified that specific construction practices in the Standard Specifications for Public Works Construction (STANDARD SPECIFICATIONS), Subsection 3-12, "WORK SITE MAINTENANCE," are considered to be Best Management Practices.

REPORTING

Contractor shall be responsible for providing all reports required by the CGP (monitoring, inspection, Rain Event Action Plans, annual reports, etc.) to County Project Manager for review. Time-sensitive reports involving monitoring data shall be provided as soon as the information is made available. All other reports shall be provided to County Project Manager a minimum of two weeks prior to their deadline for submittal to the SWRCB through SMARTS.

10. COASTAL DEVELOPMENT PERMIT (CDP)

County may have obtained a Coastal Development Permit (CDP), under the California Coastal Act, from the California Coastal Commission (CCC).

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Contractor is directed to read the CDP and comply with the conditions and requirements in the said permit and keep a hard copy of the permit on the jobsite at all times and be made available to any CCC representative at his/her request.

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SECTION 3

(Permits for WORK with a Disturbed Soil Area of One (1) Acre or Less

and Located within San Diego Region)

11. GENERAL – PERMITS, LICENSES, AND AGREEMENTS

Contractor shall be responsible for identifying and obtaining all permits and licenses required for each Task Order. Cost and fees associated with said permits shall be paid in accordance with these Special Provisions.

Contractor shall comply with all rules and regulations included in said permits and licenses. Should Contractor fail to conform to said rules and regulations, County reserves the right to perform the work necessary to conform to the rules and regulations. The cost of such work will be deducted from any funds in the executed Task Order to become due to Contractor.

It is noted that multiple permits are required from the various regulatory agencies. Contractor is to abide by and follow the requirements of such permits.

Copies of the permits shall be given to the County Project Manager prior to the beginning of work.

12. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) REQUIREMENTS (MS4 Permit)

- 1) County is subject to two Municipal NPDES Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). Both require County to prepare and update a Stormwater Program Local Implementation Plan (LIP) which details how compliance with requirements of the MS4 Permits will be maintained.

Contractor is directed to read thoroughly and comply with all requirements of Section A-8, Construction, of the County's LIP. A copy of Section A-8 of the LIP may be found on the internet at:

<https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/unincorporated>

- 2) Contractor is directed to comply with the requirements in Section G-4, "EROSION, SEDIMENT AND CHEMICAL CONTROL PLAN" (ESCCP) of these Special Provisions and shall adhere to these following BMPs:

Minimum Construction Site/Project Management Measures	
xxxi.	Pollution prevention where appropriate;
xxxii.	Development and implementation of a site-specific run-off management plan;
xxxiii.	Minimization of areas that are cleared and graded to only the portion of the site that is necessary for construction;

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xxxiv.	Minimization of exposure time of disturbed soil areas;
xxxv.	Minimization of grading during the wet season and correlation of grading with seasonal dry weather periods to the extent feasible;
xxxvi.	Limitation of grading to a maximum disturbed area as determined by County before either temporary or permanent erosion controls are implemented to prevent stormwater pollution. County has the option of temporarily increasing the size of disturbed soil areas by a set amount beyond the maximum if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution;
xxxvii.	Temporary stabilization and reseeded of disturbed soil areas as rapidly as feasible;
xxxviii.	Wind erosion controls;
xxxix.	Tracking controls;
xl.	Non-stormwater management measures to prevent illicit discharges and control stormwater pollution sources;
xli.	Waste management measures;
xlii.	Preservation of natural hydrologic features where feasible;
xliii.	Preservation of riparian buffers and corridors where feasible;
xliv.	Evaluation and maintenance of all BMPs, until removed; and
xlvi.	Retention, reduction, and proper management of all stormwater pollutant discharges on-site to the Maximum Extent Practicable (MEP) standard.
Minimum Erosion and Sediment Controls	
ix.	Erosion prevention is to be used as the most important measure for keeping sediment on-site during construction;
x.	Sediment controls are to be used as a supplement to erosion prevention for keeping sediment on-site during construction;
xi.	Slope stabilization must be used on all active slopes during rain events regardless of the season and on all inactive slopes during the rainy season and during rain events in the dry season; and
xii.	Permanent revegetation or landscaping must be implemented as early as feasible.

- 3) Contractor is responsible for selecting, implementing and maintaining an effective combination of construction BMPs on all projects from the current California Stormwater Quality Association (CASQA) Construction Handbook Web Portal which is available through a subscription service at the following internet link

<https://www.casqa.org/resources/bmp-handbooks>

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- 4) Contractor is responsible for complying with all locally enforced water quality-related codes and ordinances. It should be noted there may be multiple agencies with jurisdiction over public right of way within the WORK limits, and it is Contractor's responsibility to make sure that activities related to the WORK do not cause violations of local laws.

13. CONSTRUCTION RELATED DEWATERING & DE MINIMIS DISCHARGES

On June 24, 2015, the San Diego Regional Board adopted Order No. R9-2015-0013, General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters within the San Diego Region.

A copy of this document may be found on the internet at:

https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2015/R9-2015-0013.pdf

Contractor is hereby directed to read it thoroughly and comply with the requirements as specified therein.

Contractor is hereby notified that the permit is subject to a ninety (90) day lead time notification. County will undertake all effluent monitoring, sampling, and reporting to the California Regional Water Quality Control Board, San Diego Region, as required by the permit. Contractor shall coordinate with County Project Manager for the submittal of the permit application, including the Notice of Intent; Initial Sampling and Monitoring Report; groundwater dewatering extraction system plans and sampling, monitoring, & treatment strategies to comply with the permit requirements; and payment of all permit fees. Contractor shall comply with all requests from County for construction and location of sampling stations, construction of settling/stilling basins, and any other mitigation measures required to conform to the permit.

14. COASTAL DEVELOPMENT PERMIT (CDP)

County may have obtained a Coastal Development Permit (CDP), under the California Coastal Act, from the California Coastal Commission (CCC).

Contractor is directed to read the CDP and comply with the conditions and requirements in the said permit and keep a hard copy of the permit on the jobsite at all times and be made available to any CCC representative at his/her request.

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SECTION 4

(Permits for WORK with a Disturbed Soil Area of One (1) Acre or More

and Located within San Diego Region)

1. GENERAL-PERMITS, LICENSES, AND AGREEMENTS

Contractor shall be responsible for identifying and obtaining all permits and licenses required for each Task Order. Cost and fees associated with said permits shall be paid in accordance with these Special Provisions.

Contractor shall comply with all rules and regulations included in said permits and licenses. Should Contractor fail to conform to said rules and regulations, County reserves the right to perform the work necessary to conform to the rules and regulations. The cost of such work will be deducted from any funds in the executed Task Order to become due to Contractor.

It is noted that multiple permits are required from the various regulatory agencies. Contractor is to abide by and follow the requirements of all such permits.

Copies of the permits shall be given to County Project Manager prior to the beginning of work.

2. CONSTRUCTION RELATED DEWATERING & DE MINIMIS DISCHARGES

On June 24, 2015, the San Diego Regional Board adopted Order No. R9-2015-0013, General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters within the San Diego Region.

A copy of this document may be found on the internet at:

https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2015/R9-2015-0013.pdf

Contractor is hereby directed to read it thoroughly and comply with the requirements as specified therein.

Contractor is hereby notified that the permit is subject to a ninety (90) day lead time notification. County will undertake all effluent monitoring, sampling, and reporting to the California Regional Water Quality Control Board, San Diego Region as required by the permit. Contractor shall coordinate with County Project Manager for the submittal of the permit application, including the Notice of Intent; Initial Sampling and Monitoring Report; groundwater dewatering extraction system plans and sampling, monitoring, & treatment strategies to comply with the permit requirements, and payment of all permit fees. Contractor shall comply with all requests from County for construction and location of sampling stations, construction of settling/stilling basins, and any other mitigation measures required to conform to the permit.

3. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) REQUIREMENTS (MS4 Permit)

- 3) County is subject to two Municipal NPDES Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). Both require County to prepare and update a Stormwater Program Local Implementation Plan (LIP), which details how compliance with requirements of the MS4 Permits will be maintained.

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Contractor is directed to read thoroughly and comply with all requirements of Section A-8, Construction, of County's LIP. A copy of Section A-8 of the LIP may be found on the internet at:

<https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/unincorporated>

- 4) Contractor is responsible for complying with all locally enforced water quality-related codes and ordinances. It should be noted there may be multiple cities with jurisdiction over public right of way within the WORK limits, and it is Contractor's responsibility to make sure that activities related to the WORK do not cause violations of local laws.

4. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES WATER QUALITY ORDER NO. 2022-0057-0009-DWQ (CONSTRUCTION GENERAL PERMIT)

On September 81, 2022, 2009, the State Water Resources Control Board adopted Order No. 2022-0057-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities). Effective September 1, 2023, all dischargers (construction sites where calculated soil disturbance totals 1 acre or more) are required to obtain coverage and comply with this Construction General Permit (CGP).

A copy of this permit and related documents/attachments may be found on the internet at:

https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html

Contractor is hereby directed to read and understand all the requirements of this Permit as they relate to this Project.

Prior to commencing WORK, 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 through the Stormwater Multi-Application, Reporting, and Tracking System (SMARTS) to the State Water Resources Control Board (SWRCB) to obtain coverage under the CGP.

5. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

Contractor will be required to implement a site-specific SWPPP, which will be submitted by County Project Manager.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL County HAS RECEIVED A TRACKING NUMBER FROM THE SWRCB.

The SWPPP shall be developed using California Stormwater Quality Association (CASQA) Stormwater Pollution Prevention (SWPPP) Template.

The CASQA SWPPP template is available through a subscription service at the following internet link:

<https://www.casqa.org/resources/bmp-handbooks>

County Project Manager may amend the SWPPP as needed during the course of WORK to reflect actual construction progress and construction practices. Contractor shall designate a Qualified SWPPP

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Practitioner (QSP), as defined by the CGP, who will be responsible for compliance with CGP requirements for WORK at all times.

Contractor's QSP must be on-site to observe BMP installation and approve all SWPPP implementation. Contractor's QSP must be on-site during all required NPDES inspections (weekly, rain events, and quarterly non-storm). Within seventy-two (72) hours from receiving BMP corrections from County Local Agencies and/or SWRCB staff (but only as directed by County Project Manager), Contractor's QSP shall initiate SWPPP modifications in the field as necessary and complete them as soon as possible and prior to predicted rain events. Contractor's QSP shall prepare written reports for the corrective actions and submit them to County Project Manager. All work may be stopped at the County Project Manager's discretion if corrective action is not taken in a timely manner. Any cost/delays incurred due to stopped work will be solely borne by the Contractor.

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, Contractor acknowledges that he has read and understands the requirements of the CGP.

Contractor is hereby notified that specific construction practices in the Standard Specifications for Public Works Construction (STANDARD SPECIFICATIONS), Subsection 3-12, "WORK SITE MAINTENANCE," are considered to be Best Management Practices.

REPORTING

Contractor shall be responsible for providing all reports required by the CGP (monitoring, inspection, Rain Event Action Plans, annual reports, etc.) to County Project Manager for review. Time-sensitive reports involving monitoring data shall be provided as soon as the information is made available. All other reports shall be provided to County Project Manager a minimum of two weeks prior to their deadline for submittal to the SWRCB through SMARTS.

6. COASTAL DEVELOPMENT PERMIT (CDP)

County may have obtained a Coastal Development Permit (CDP), under the California Coastal Act, from the California Coastal Commission (CCC).

Contractor is directed to read the CDP and comply with the conditions and requirements in the said permit and keep a hard copy of the permit on the jobsite at all times and be made available to any CCC representative at his/her request.

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 Public Works 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.

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- 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 (A) Contractor's license issued by the California State Contractor's License Board.
- I. Contractor 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 Job Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OC Public Works.
- 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,

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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 downstream 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, bitumens 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 stormwater 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 flushings.

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 stormwater shall be done with all applicable statutes, ordinances, permits, regulations and provisions of this Contract governing stormwater.

- R. Survey Services:

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Surveying services can be provided either by County or the Contractor.

For projects where OC Surveyor will provide survey control points for Contractor: Contractor shall be made aware that County has a work schedule with limited surveying services available on Friday, and that surveying services cannot be guaranteed on all Fridays. Contractor is required to keep the County Project Manager informed in advance of his schedule to assure surveying services are available for the WORK as described in Subsection 3-10, "SURVEYING," of the STANDARD SPECIFICATIONS. Contractor shall submit a formal written request for surveying services to the County Project Manager no less than forty-eight (48) hours in advance of his need for such services. Failure by Contractor to submit a written request in a timely manner may not guarantee that such services will be available when required, and surveying services cannot be guaranteed on Friday regardless.

Contractor shall replace and/or relocate dislocated survey control points. In addition, Contractor's attention is directed to Section 8771(b) of the Business and Professions Code and filing of the appropriate document(s): Corner Record or Record of Survey with the County of Orange, County Surveyor or Designee. Contractor shall be responsible for coordinating with the County Project Manager and County survey crew based on the original survey control and submitting field notes showing the character of the new points and methods of establishment or re-establishment. Contractor shall make no changes without prior written approval from County Project Manager and County survey crew.

The costs for replacement and relocation of dislocated survey control points as specified in these Special Provisions, and as directed by the County Project Manager and County survey crew, is considered as included in the various items of work involved and no additional compensation will be allowed therefor.

For projects where Contractor will provide all surveying services for project:

Contractor shall, to the satisfaction of County Project Manager, layout the work from the plans and shall establish all benchmarks, monuments, lines, and levels necessary for the construction covered by this contract unless otherwise specified herein. Contractor shall employ a qualified land surveyor registered in the State of California, to lay out the work and to verify the lines and elevations as the work progresses. All dimensions shall be checked against existing conditions and discrepancies reported immediately to County Project Manager. Contractor shall be responsible for establishment of basic layout of entire area to the satisfaction of County Project Manager prior to beginning any major portion of grading for construction. Any discrepancies arising from preliminary layout shall be resolved prior to construction. During the progress of construction, Contractor shall provide surveying service as necessary, or upon request of County Project Manager, to assure that the construction complies with the plans and specifications.

County will furnish the basic control for alignment and grades consisting of the following:

- A. Initial establishment of project centerline or baseline.
- B. Establishment of the reference benchmarks indicated on the plans.

While County Project Manager may, at his discretion, check Contractor's surveying work at any time, checking by County survey parties may be limited to checking finished product being within the tolerances given in other sections of the specifications. Contractor shall furnish County Project Manager with copies of original field notes, computations, and other records during progress of the work.

S. Inspection Services:

Contractor shall be made aware that County has a work schedule with limited inspection services available on Friday. Contractor is required to keep County Project Manager informed in advance of his

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schedule so as to assure inspection is available for onsite work that will be performed by Contractor, or off-site work, such as material sampling and testing, which may or may not be performed by Contractor.

REPLACE the second sentence of Section 3-5, "INSPECTION," of the STANDARD SPECIFICATIONS with the following:

Contractor shall notify County Project Manager before noon of the working day before inspection is required, except for inspection on Friday. Requests for inspection on Friday shall be made by 4:00 p.m. on the preceding Wednesday.

T. Measurement and Compensation:

Compensation for items of work not specifically identified in these Special Provisions shall include all labor, materials, tools, equipment, safety measures, and supervision required to complete the work to grades and dimensions shown on the plans or staked in the field. There shall be no compensation except for the items specified in the Detailed Scope of Work for each Task Order (pre-priced Unit Price List items or non-pre-priced items). The cost of all work shown in the plans and specifications, but not specifically identified as a cost item or described within a Detailed Scope of Work Task Order item, shall be included in related supplemental Task Order items, and no additional compensation shall become due Contractor by nature of compliance with the plans and specifications except as provided in Section 2, "SCOPE OF THE WORK" of the STANDARD SPECIFICATIONS.

U. Federal Labor Standards Information:

For projects that received Federal funding, Contractor is required to comply with the labor standards promulgated by the United States Secretary of Labor:

Contractor's attention is directed to some important provisions of Specifications that shall be accomplished by Contractor. The provisions are as follows:

- A. Pay not less than the prevailing wages outlined in the Contract and these Special Provisions, including time and a half to those employees who worked over eight hours per day or forty hours per week on the project.
- B. Pay all employees at least once a week.
- C. Post the applicable wage determinations on the job site so that employees may verify their rates of pay.
- D. Submit weekly payroll records and a statement of compliance to the contracting government and keep these records for three years from the date of completion of Agreement.
- E. Make the provisions of the Federal Labor Standards part of all subcontractor contracts.
- F. Contractor shall be notified if a Task Order is subject to Federal Labor Standards by including this requirement in the Detailed Scope of Work.

V. Soil Conditions:

If site investigation or soil testing is done on a JOC Task Order, copies of the Geotechnical Report(s)/Soils Report will be made available for review by Contractor.

The Soils Report shall not be construed to be a waiver of Contractor's obligation to inspect the soil conditions before submitting a Task Order Proposal. By submitting a Task Order Proposal, Contractor acknowledges satisfaction as to the quality of the soil information, including but not restricted to the conditions affecting handling and storage of the materials, disposal of excess material, and level and amount of groundwater.

W. Unforeseen Difficulties:

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Contractor shall promptly notify the County Project Manager of any work site conditions per Subsection 2-9, "CHANGED CONDITIONS," of the STANDARD SPECIFICATIONS, in writing, upon their discovery and identification, and before they are disturbed. All loss or damage arising out of the nature of the work to be accomplished under Agreement, or from any unforeseen obstructions or difficulties which may be encountered during the progress of the work and in the prosecution of the same, or from the action of elements, or encumbrances on the line of work, shall be sustained by Contractor for failure to notify County Project Manager per Subsection 2-9 "CHANGED CONDITIONS," of the STANDARD SPECIFICATIONS and these Special Provisions.

X. Provisions for Emergencies:

Unusual conditions may arise during the work, requiring immediate and unusual provisions to protect the public from danger, loss, or prosecution of the work. It is part of the service required of Contractor to make such provisions and to furnish such protection.

Contractor shall take such steps and precautions as his operations make necessary in order to protect the public from danger, damage, or loss of life or property which would result from the interruption or contamination of public water supply, irrigation or other public service, or from the failure of partly completed work.

Whenever, in the opinion of the County Project Manager an emergency exists against which Contractor has not taken adequate precautions for public safety or for protection of utilities, adjacent structures or property which may be injured by process of construction on account of such neglect and immediate action is necessary in order to protect public, private, personal or property interest, or prevent likely loss of human life or damage on account of the WORK, then County Project Manager may provide suitable protection to said interests by causing such work to be done and material to be furnished which the County Project Manager deems reasonable and necessary.

The cost of said repairs, including labor and materials, as may be deemed necessary by County Project Manager shall be borne by Contractor. If Contractor does not pay said cost and expenses upon presentation of the bills therefor, duly certified by the County Project Manager, said cost and expense will be paid by County and shall be deducted from any amounts due, or which may become due Contractor. Failure of County, however, to take such precautionary measures shall not relieve the Contractor of his full responsibility for public safety.

Y. Construction & Demolition Recycling & Reuse Program:

The County of Orange implemented this program in 2008 to comply with the California Integrated Waste Management Act of 1989 (AB939) to implement sustainable practices and conserve landfill capacity in the County of Orange.

Contractor and/or subcontractors must recycle 50 percent of Construction and Demolition (C&D) debris or must show good faith effort in each and every Task Order unless the Task Order work qualifies for an exemption. Upon failure to comply with this requirement, Contractor will have to pay a fine if Contractor does not show proof of recycling or good-faith effort.

Contractor must save receipts from recyclers or transfer stations. Receipts are required to establish Contractor's compliance with its application with OC Waste & Recycling for Construction and Demolition Waste Reduction and Recycling at 714-834-4165, fax 714-834-4001. The Task Order Detailed Scope of Work will outline the need to file an application with OC Waste and Recycling. For Task Order without the line items for application with OC Waste and Recycling, Contractor shall present the receipts from recyclers or transfer stations to COUNTY's assigned project manager, along with its final payment requests. Failure to provide the receipts will result in the applicable fine deducted from Contractor's earned amounts for the respective Task Orders.

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The application and requirements are included as Appendix A to these contract documents.

Z. Traffic and Access:

Contractor may be required to submit a traffic control plan for a Task Order for road resurfacing arterial highways or streets. The plans shall be prepared, stamped and signed by a Registered Civil Engineer to the County Project Manager for review and approval by the impacted Cities and County of Orange at least fifteen (15) working days prior to commencing work. Said plan shall indicate the locations of all signage, barricades, flashing arrow signs, delineators, lane closures, and temporary lane lines, required to control traffic and detours during construction. The traffic control plan shall include details to detour bicycle traffic around or through the construction limits. All such devices shall be removed from the view of traffic when not required. There are four (4) traffic control categories for the Task Orders and are listed as follows:

Category I

A minimum of two (2) lanes of traffic in each direction shall be maintained during working hours (9:00 a.m. to 3:00 p.m.). All lanes of traffic shall be maintained during non-working hours.

Category II

A minimum of one (1) lane of traffic in each direction shall be maintained during working hours. All lanes of traffic shall be maintained through non-working hours.

Category III

A minimum of one (1) lane of traffic, with flagman control, shall be maintained during working hours (9:00 a.m. to 3:00 p.m.).

Category IV

Roads may be closed during working hours (9:00 a.m. to 3:00 p.m.). All lanes of traffic shall be maintained during non-working hours. No work will be allowed on Saturday or Sunday.

In the event that traffic is heavy past the a.m. working hour or before the p.m. working hour, at the Project Manager's request, Contractor shall begin work after the a.m. peak-hour traffic and end work before the p.m. peak hour traffic.

During the WORK Contractor shall provide a safe means for students and other pedestrians to use crosswalks that are within the limits of the Task Order, or crosswalks that may be affected by Contractor's operations.

Contractor shall maintain a minimum travel lane width of eleven (11) feet during any construction operation. Changes in the prescribed lane width must be approved by the County Project Manager.

A minimum lane clearance of five (5) feet shall be maintained between the travel lanes and any open trench or excavated (asphalt removal) area.

Excavated areas shall not remain uncovered overnight or on weekends.

ADD to STANDARD SPECIFICATIONS Section 600, "ACCESS," the following:

Access to private properties shall be maintained at all times during the construction where practical. Prior to restricting normal access to private properties, Contractor shall provide notification as

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required in these special provisions. In no case shall access to private property be restricted longer than eight (8) hours unless otherwise approved by the County Project Manager.

Contractor shall provide access, at least temporary access, to all business and residential driveways except at those times when construction operations specifically prohibit such access. At least 24 hours prior to restricting such access, Contractor shall contact the residents and advise of the nature and duration of the restriction in order to allow the residents to relocate their vehicles.

Contractor shall immediately remove any spillage resulting from its hauling operations along or across any public travel way.

When entering or leaving roadways carrying public traffic, Contractor's equipment, whether empty or loaded, shall, in all cases, yield to public traffic.

Advisory signs shall be posted for those streets to be closed. The delay time and the advising of alternate routes shall be indicated on each sign.

Special emphasis shall be placed on the use of construction zone ahead (W20-1) signs at the beginning end, and all access and intersecting streets with roads under construction.

Contractor shall provide and maintain all other signs, barricades, pedestals, flashers, delineators, and other necessary facilities for the protection of the public within the limits of the construction area. Contractor shall also post proper signs to notify the public regarding detours and the condition of the roadway, all in accordance with the provisions of Parts 4 and 6 of the California Manual on Uniform Traffic Control Devices 2014 Revision 6 (CA MUTCD), as published by the State of California, Business, Transportation and Housing Agency, Department of Transportation and the State of California, Department of Transportation respectively.

Flashing arrow signs, of the appropriate type per the CA MUTCD, shall be provided for all lane closures on all arterial highways, and collector streets.

Portable changeable message signs shall be provided during all construction work on streets and arterial highways. The signs shall be continuous line matrix and shall comply with the CA MUTCD and shall be programmed to give adequate warning to traffic or to the public of current road traffic conditions.

Portable delineators, either conical (traffic cone) or tubular-shaped plastic devices, with a minimum height of 28 inches, shall be used for delineation of the travelway.

If the traffic cones or portable delineators are damaged, displaced, or are not in an upright position, from any cause, said cones or portable delineators shall immediately be replaced or restored to their original location, in an upright position, by Contractor.

Contractor shall furnish such flagmen as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered. Flagmen, while on duty and assigned to give warning to the public that the highway is under construction and of any dangerous conditions to be encountered as a result thereof, shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flaggers," by the State of California Department of Transportation. The equipment shall be furnished and kept clean and in good repair by Contractor, at its expense.

Contractor shall provide communication radios for all flagmen controlling lane closures on narrow

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(rural) roads, for ingress or egress traffic on cross streets or driveways, and when vertical and horizontal vision is impeded during the times when only a single lane of traffic is open for two-way traffic.

Should Contractor appear to be neglectful or negligent in furnishing warning and protective measures as specified herein, the County Project Manager may direct attention to the existence of a hazard, and the necessary warning and protective measures shall be furnished and installed by Contractor, at its expense. Should the County Project Manager point out the inadequacy of warning and protective measures, such action on the part of the County Project Manager shall not relieve the Contractor from responsibility for public safety or abrogate its obligation to furnish and pay for these devices.

The contractor shall identify the service providers for items 1 through 5 and notify all agencies and companies listed below at least 48 hours before any street closure or restriction to access.

Item	Agency or Company		
1	Orange County Transportation Authority		
2	Ambulance Services		
3	Schools and School Bus Organizations		
4	Refuse Collection Companies		
5	Post Offices		
Item	Agency	Address	Phone No.
6	* Orange County Fire Authority	1 Fire Authority Road Irvine, CA 92602	714-573-6000
7	** Orange County Sheriff (North)	550 N. Flower St Santa Ana, CA 92703	714-647-1850
8	Orange County Sheriff (South)	11 Journey Aliso Viejo, CA 92656	949-425-1800
9	Sheriff Communication Dispatch (Loma Ridge)		714-628-7000
10	California Highway Patrol (North)	2301 E. Santa Clara Ave Santa Ana, 92705	714-547-8311
11	California Highway Patrol (South)	32951 Camino Capistrano San Juan Capistrano	949-487-4000

* Or local city fire departments where applicable

** Or local city police departments where applicable

Contractor shall distribute advisory notices to each business or resident, which will be affected by the street closure or restriction to access. Said notices shall be in the form of a doorknob card which County will furnish for activities that would affect access and operations.

The contractor shall fill in the day and date for the scheduled work and distribute notices at least 36 hours but not more than 72 hours, excluding Sundays, before work.

The contractor shall also be required to post and subsequently remove temporary "Tow-Away No parking" signs along the streets and roads under construction no less than 24 hours before work. The signs shall be posted on a temporary standard, i.e. barricade, delineator, or stake, and shall not be affixed to any public or private property standards or structures. County will furnish the signs upon request by Contractor. Contractor shall fill in the day and date for the

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schedule work. When these signs are removed by wind or vandals before the reopening of the street, Contractor shall repost them.

Contractor shall be responsible for adequate barricading of the work area and controlling traffic in the vicinity of the project as specified in the STANDARD SPECIFICATIONS, Section 600, "ACCESS," and these special provisions. Barricades shall be staged and ready for controlling traffic, but no street shall be closed until immediately before the asphalt overlay resurfacing or fog seal is applied.

Contractor shall protect the uncured asphalt overlay resurfacing from traffic at all times and, if damaged or defaced, Contractor shall repair said damage at no additional cost to County.

In special cases, the Contractor may be required to furnish and spread sufficient sand to eliminate tracking or damage to the asphalt over the resurfacing mixture or to adjacent property. Prior to sanding at the specific location, Contractor shall obtain the approval of the County Project Manager. At all arterial intersections where sand will be applied over fresh asphalt overlay resurfacing for access, Contractor shall post "Loose Gravel" (C6) construction signs. Signs shall be posted from the commencement of asphalt overlay resurfacing until all sand has been cleaned from the roadway. Contractor shall remove all sand by sweeping within 24 hours after opening the street to traffic.

At the end of each day's work and when construction operations are completed or suspended, all equipment and other obstructions shall be removed from the roadways.

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 Job Order, for a period of 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 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 Job 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

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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.

Contractor is required to use Gordian's JOC Solution to receive task orders from the County under this Contract. This requires Contractor to enter into Consultant's JOC System License, with Consultant as licensor and Contractor as licensee, and comply with all applicable terms of that license, including that payment of applicable license fees to Consultant for use of its Gordian JOC Solution. The Contractor's use, in whole or in part, of the Consultant's JOC Applications, Construction Task Catalog® and other proprietary material provided by the Consultant (Consultant Materials) is subject to Consultant's JOC System License, and Contractor may not use Consultant Materials for any purpose other than to execute work under this County for the County. The Contractor hereby agrees to take all actions necessary to maintain access to the Gordian JOC Solution by complying with Consultant's JOC System License during the Term of this County.

A copy of Consultant's most recent JOC System License can be found on the next page.

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EXHIBIT A

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

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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.

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**ATTACHMENT B
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the County and Contractor for Flood Control and Bridge Maintenance 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 two 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 Job 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 (7:00AM to 5:00PM) as ordered by the County in individual Job Orders against this Contract.

1.04

Utilize four decimal places

- ii. **FACTOR 2** - Unit Work requirements to be performed during Other Than Normal Working Hours (5:01PM to 6:59AM) as ordered by the County in individual Job Orders against this Contract.

1.10

Utilize four decimal places

- B. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED..... \$3,500,000**

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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 Job 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.
- B. **Lump sum payment** - if an individual Job Order is scheduled for Completion within 45 days or less, the County will make one payment after 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 Job Order.
- C. **Partial payment** – the County will consider a request for partial payments for Job Orders scheduled for a performance period of greater than 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 Job Order must be filed. Final payment is to be made 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 Job 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.

VI. INVOICING INSTRUCTIONS:

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- 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 and 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 or 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 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.
- F. 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

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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.

- G. 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.
- H. 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:

OC Public Works/OC Construction
 Attn: *Project Manager*
 601 N Ross Street
 Santa Ana, CA 92701

- I. 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 DPA.