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COUNTY OF ORANGE MODEL CONTRACT
AGGREGATE JOB ORDER CONTRACT (JOC)
FOR
GENERAL CONTRACTING SERVICES
BETWEEN
COUNTY OF ORANGE
AND
PRIME ENC, INC.

This Job Order Contract MA-280-27010284 for General Contracting Services ("Contract") is made and entered into as of the date fully executed by and between County of Orange, John Wayne Airport, a political subdivision of the State of California, ("County") and Prime ENC, Inc. ("Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties."

RECITALS

WHEREAS, County and Contractor are entering into this Aggregate Contract for General Contracting Services at John Wayne Airport under a Usage Contract; and,

WHEREAS, County solicited Job Order Contract (JOC) for General Contracting Services as set forth herein, and Contractor has represented that it is qualified and capable to provide General Contracting Services at John Wayne Airport as further set forth herein; and,

WHEREAS, Contractor agrees to provide General Contracting Services at John Wayne Airport 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. A-E: The Architect or Engineer or his authorized representative retained by the County to design the work.

2. Adjustment Factor: The Bidder's competitively bid price adjustment to the unit prices published in the Construction Task Catalog®.

3. Airport-secured area: a portion of an airport, specified in the airport security program, in which certain security measures specified in Title 49 of the Code of Federal Regulations are carried out. This area is where aircraft operators and foreign air carriers that have a security program under 49 CFR part 1544 or part 1546 enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security systems, measures, or procedures.

4. Board of Supervisors: The governing body of the County of Orange.

5. 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.

6. 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

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Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

7. 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.

8. Contract: Contract consists of Notice Inviting Bids, Job Order Contract Agreement, Performance Bond, Payment Bond, Certificates of Insurance, CTC, Specifications, Task Orders and all modifications and amendments hereto.

9. County: The County of Orange as a legal entity, a political subdivision of the State of California.

10. County Project Manager: The County's assigned Project Manager.

11. 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.

12. 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.

13. Director: The Director of John Wayne Airport, County of Orange, or a designated representative for the work.

14. Final Acceptance: All Work has been completed and accepted by the County. The Contractor has provided all required close-out documentation and items as required by the Detailed Scope of Work for the specific Job Order, and these items and have accepted and approved by the County.

15. Job Order: A written order issued by the County requiring Contractor the complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. Work may consist of one or more Job Orders.

16. Job Order Authorization (JOA): Issued upon acceptance of quote and the duration schedule, stating that the quote is a firm fixed price. Must be issued prior to issuance of a Notice to Proceed.

17. Job Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.

18. 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.

19. Job Order Price: The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.

20. Job Order Quote (Quote): Contractor's irrevocable offer to perform Work associated with a Job Order and refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's 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. Contractors are required to submit a detailed project schedule using a robust project management tool capable of handling complex schedules, resources, and project portfolios.

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Preferred formats include Oracle Primavera P6 or Microsoft Project. The submitted schedule should clearly outline task sequencing, durations, dependencies, and critical path elements to ensure effective project tracking and coordination.

21. 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.

22. Maximum Potential Contract Amount: The maximum potential value of the Contract as defined on the Description of Work.

23. Minimum Contract Amount: There is no minimum amount of Work that the Contractor is guaranteed under this Contract.

24. 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.

25. 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.

26. Other Than Normal Working Hours: Means Work done between the hours of 5:01 PM to 6:59 AM, on weekdays and any times during Saturday, Sunday, and County holidays.

27. Pre-Priced Task: A task described in, and for which a Unit Price is set forth, in the CTC.

28. Project: The work to be performed by Contractor on behalf of County pursuant to this Contract as described in individual Job Orders.

29. Request for Quote (RFQ): The County's Request for Quote for a specific Job Order.

30. Specifications: The explicit requirements for the material, design, product, system or service and workmanship for the work to be utilized in completing each Job Order.

31. 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.

32. Unit Price: The price published in the CTC for a specific construction or construction-related task. Unit Prices for new Pre-Priced Tasks can be established during the course of the Contract and added to the CTC. The unit prices are fixed for the term of the Contract. Each Unit Price is comprised of the prevailing wage labor, equipment and materials costs to accomplish a specific task.

33. Work: The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the Contractor to faithfully perform and complete all of its obligations under the Contract.

ARTICLES

1. **Scope of Contract:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide General Contracting Services at John Wayne Airport 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 **December 17, 2026** if executed with all necessary signatures by this date, or upon the date of execution

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of all necessary signatures if execution occurs after **December 17, 2026** ("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. **Aggregate Contract:** This is an Aggregate Contract **with Amtek Construction, First Trade LLC dba YMC, Prime ENC, Inc., and Mel Smith Electric, Inc.**, with an Aggregate Contract Amount not to exceed **$8,000,000**, for a one-year term effective upon execution of the contracts. No Contractor shall be issued task orders under this Aggregate Contract if the sum of such task orders would exceed the statutory maximum permitted by Public Contract Code § 20128.5 and Contract Policy Manual § 3.5-114(1)(d).

4. **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.

5. **County's Representatives:**

   A. The Contract will be under the general direction of the Board of Supervisors. John Wayne Airport 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, John Wayne Airport, 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 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.

   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.

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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.

6. **Contractor:**

A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

B. 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 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.

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.

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D. Superintendent and County Project Manager: The Contractor shall provide County Project Manager with complete Work history profiles of management staff associated with this Project for County Project Manager review.

7. **Usage:** Unless otherwise specified herein, no guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.

8. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet at a County designated location to discuss the Contractor's performance and progress under this Contract, at the request of the County's Project Manager. If requested by County, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

9. **Conflict Of Interest – 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 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.

10. **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.

11. **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.

12. **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.

13. **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

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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.

14. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

15. **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 spokesperson for County projects without first obtaining permission from the County Project Manager.

16. **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.

17. **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.

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18. **Sub-Contractor Audit:** Contractor shall include a clause in its contracts with subcontractors, and shall require subcontractors to include a clause in its contracts with sub-subcontractors, which reserves the right for a County representative to audit any cost, payment, or settlement resulting from any items set forth in this Contract during the performance of this Contract and for a period of 3 years, or longer if required by law, after final payment is made or until all disputes, appeals, litigation, or claims arising from this Contract have been resolved, whichever is later. This clause shall also require subcontractors to retain all necessary records for a period of not less than 3 years after final payment is made or until all disputes, appeals, litigation, or claims arising from this Contract have been resolved, whichever is later.

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

    Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Contract involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars ($l0,000), 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.

20. **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. In addition, the Contractor shall abide by the operational safety guidelines/requirements per the latest version of FAA Advisory Circular (AC) 150/5370-2G when performing construction or Work at the Airport.

    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 and the guidelines/requirements of the FAA AC 150/5370-2G. 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.

21. **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.

22. **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

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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.

23. **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 John Wayne Airport. Contractor's and subcontractors' employees shall possess means of identification at all times as required by John Wayne Airport 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 John Wayne Airport. Any dispute as to compensation claimed by the Contractor on account of emergency Work shall be determined by agreement as hereinafter set forth.

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

If the Contractor fails or refuses to comply promptly, John Wayne Airport 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.

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.

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24. **Access and Security Requirements:** Contractor, Contractor's employees and Contractor's subcontractors must complete the following in order to obtain an Airport-Issued Security Identification Badge (ID Badge).

    A. **Airport-Issued Badge Acquisition, Retention, and Termination:** Prior to issuance of airport security ID Badge(s), designated Contractor personnel who shall be working on-site in JWA restricted areas and engaged in the performance of work under this Contract must pass JWA's security screening requirements, which include fingerprinting to complete an F.B.I. Criminal History Records Check (CHRC) and a Security Threat Assessment (STA). Contractor should anticipate four to six weeks for new employees to receive an airport security ID badge which includes the following general steps:

    1. Company designates at least two representatives as Authorized Signatories by submitting a letter on company letterhead using the airport's template.
    2. Subcontractors and tenant contractors must also have two Authorized Signatories at a minimum.
    3. All company employees requiring unescorted access to restricted airport areas are scheduled for fingerprint appointments.
    4. Background check fees are provided at the first appointment
    5. Employees must provide two government-issued IDs at the first appointment.
    6. STA and/or CHRC results are received.
    7. All ID Badge applicants successfully passing the STA and/or CHRC are scheduled for required training.
    8. ID Badge related fees are provided and any additional information requested is provided at the training appointment.
    9. Upon successful completion of the required training, employees will receive their ID Badge.
    10. Authorized Signatories are required to maintain the ID Badge process for the onboarding of future employees, employee ID Badge renewals, scheduling, and other actions detailed below.

Contractor's designated personnel must, at a minimum, complete the following required training based on contractors work to be provided and access areas:

1. Authorized Signatory Training: All organizations must designate at least two Authorized Signatories by providing a letter on company letterhead using the ID/Access Control Office template. The designated Authorized Signatories will be responsible for the entire ID Badge process for their organization including, but not limited to, the onboarding of new employees, renewing employees, scheduling employees for appointments, payment coordination, ID Badge audits, resolution to safety/security violations caused by the organizations employees, subtenants, or subcontractors. Authorized Signatories must attend this approximate 1 hour course initially and annually.
2. Security Identification Display Area (SIDA) Training: All employees with an operational need to have unescorted access to the Airport SIDA must complete this approximate 1.5 hour course and pass a written test.
3. Sterile Area (Elevator) Training: All Non-SIDA employees with an operational need to have unescorted access to the Sterile Area of the terminal must complete an approximate 30-minuite training session and pass a written test.
4. Non-Movement Area or Movement Area Driver Training: All employees with an operational need to drive on airfield service roads and/or ramps must attend the approximate 1-hour Non-Movement

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Area Driver course and pass a written test. Employees with an operational need to drive on active taxiways and/or active runways must coordinate this training with the Airport Operations Division.

5. Contractors' designated personnel must successfully complete the badge acquisition within six weeks of Contract execution, unless other arrangements have been coordinated by County Project Manager or designee in writing.
6. All personnel assigned to this contract must be in possession of a current, valid Airport-Issued ID Badge prior to fulfilling an independent shift assignment.
7. Contractor is responsible for terminating and retrieving Airport-Issued ID Badges as soon as an employee no longer needs unescorted access to airport restricted areas. Terminated ID Badges must be returned to the ID/Access Control office within three business days. Failure to do so will result in a $250.00 fee.
8. Contractor shall be responsible for all costs associated with the Airport-Issued ID Badge process. The ID/Access Control Office maintains the current list of fees. Below is a list of estimated costs for new ID Badge applications and ID Badge renewals:
   - STA Fee: Approximately $11.00
   - Fingerprint/CHRC Fee: Approximately $31.00
   - ID Badge Fee: Approximately $10.00
   - Terminated, Unreturned ID Badge Fee: Approximately $250.00
9. Contractor shall abide by all the security requirements set forth by the Transportation Security Agency (TSA) and JWA.

B. **Airport Driving Endorsement**: In addition to obtaining a JWA access control badge, Contractor's service staff with an operational need to drive on airport service roads and ramps must also take an Airport provided training course and pass a test to acquire an airfield driving endorsement.

Some Air Operations Area projects will require vehicles to be equipped with visible company placards on both sides of the vehicle, an orange/white checkered flag, an amber, rotating beacon, and a two-way radio to monitor FAA Air Traffic Control Tower frequencies; or be escorted by a vehicle with this equipment and markings. Only vehicles, equipment, and personnel who have prior authorization by the ASP may operate on runways, taxiways and movement areas, or cross runways and taxiways. Under no circumstance shall any vehicle operate on or cross a runway, taxiway, or any movement areas unless permission from the Tower is granted. Vehicles requiring an escort must be escorted by Airport Operations, or authorized company vehicles, equipped with two-way radios, and in constant radio communication with the FAA Tower Control.

C. **Airport ID Badge Holder Requirements and Responsibilities:** TSA approved security program for JWA requires that each person issued a JWA security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of JWA.

1. All persons within the restricted air operation areas of JWA are required to display, on their person, a JWA security badge, unless they are specifically exempted for safety reasons or they are under escort by a properly badged individual. Each JWA employee, JWA Contractor, subcontractor or tenant employee who has been issued a JWA security badge is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid JWA security badge must immediately be referred to the Sheriff's Department - Airport Police Services Office for proper handling.

2. JWA security badge is the property of County and must be returned upon termination of Contractor personnel employment and/or termination, expiration or completion of Contract. The loss of a

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badge shall be reported within 24 hours to the Sheriff's Department - Airport Police Services by calling (949) 252-5000. Individuals that lose their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement shall be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge shall be issued.

3. JWA security badge is nontransferable.

4. In the event that a contractor's badge is not returned to JWA upon termination of Contractor personnel employment and/or termination or expiration of Contract, a fine of $250.00 per badge shall be charged to Contractor. Contractor's final payment may be held by County or a deduction from contractor's payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.

5. Contractor shall submit the names, addresses, and driver's license numbers for all Contractor personnel who shall be engaged in work under this Contract to County Project Manager within seven days after award of the Contract or within seven days after the start of any new Contractor personnel and/or prior to the start of any work.

6. No worker shall be used in performance of this work that has not passed the background check.

25. **Anti-Idling Policy:** Within six months of Contract execution, Contractor must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. Contractor's policy shall also include all third-party vehicles that enter Airport property at the direction of Contractor.

26. **Safety:** Contractor shall submit to County for approval by JWA a Project-Specific Safety & Health Plan within ten (10) calendar days from the Contract Award Date, in accordance with the General Requirements. JWA shall have up to fourteen (14) calendar days to approve or disapprove such plan. The failure by the Contractor to submit an acceptable Project-Specific Safety & Health Plan and/or to meet the health and safety requirements of its safety plan, JWA's safety plan, the requirements set forth in this Agreement or any ordinances, regulations, laws, or customary industry or trade practices relating to health and safety, shall be grounds for the County to reject, in its entirety, any request for payment by the Contractor, withhold payments due to the Contractor, and order that all work be stopped. Should JWA stop work, Contractor may only resume work upon Contractor's submission and JWA's approval of a revised Project-Specific Safety & Health Plan. Contractor is not entitled to damages as a result of such stoppage of work. Failure of the Contractor to maintain a healthy and safe environment in accordance with the requirements of this Agreement shall constitute a material breach of this Agreement. Delays to the Schedule that may be incurred by the Contractor resulting from an unapproved safety plan, revised safety plan, or work stoppage for reasons related to safety are inexcusable and non-compensable.

27. **Operational Requirements:** The Contractor shall not interrupt any operation of JWA in the performance of the work without prior written approval by JWA. County may stop work if Contractor interrupts the operation of any County or Federal facility, equipment, or system. Should the County stop work, such work may only resume upon Contractor submission, and upon County approval, of a revised Construction Execution Plan. Contractor is not entitled to damages as a result of such stoppage of work. Any Contractor interruption may constitute a material breach of this Contract.

28. **Quality Control:** Contractor shall submit to County for approval, a Quality Control Plan within ten (10) calendar days from the Contract Award Date, in accordance with the General Requirements. County shall have up to fourteen (14) calendar days to approve or disapprove such plan. The failure by the Contractor

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to submit an acceptable Quality Control Plan or meet the Quality Control requirements of this Agreement shall be grounds for the County to reject, in its entirety, any request for payment by the Contractor, withhold payments due to the Contractor, and order that all work be stopped. Should County stop work, such work may only resume upon Contractor submission, and upon County approval, of a revised Quality Control Plan. Contractor is not entitled to damages as a result of such stoppage of work. Failure of the Contractor to meet the quality requirements of this Agreement may constitute a material breach of this Agreement. Delays to the Schedule that may be incurred by the Contractor resulting from an unacceptable Quality Control Plan, revised Quality Control Plan, or work stoppage for reasons related to its Quality Control Plan(s) are inexcusable and non-compensable.

29. **Storm Water Pollution Prevention Plan (SWPPP):** Contractor shall submit to County for approval by JWA a SWPPP within twenty-one (21) calendar days following the Contract Award Date when one is required according to JWA. JWA shall have up to fourteen (14) calendar days to approve or disapprove such plan. Failure by the Contractor to submit an acceptable SWPPP or meet the requirements of the JWA-approved SWPPP shall be grounds for the County to reject, in its entirety, any request for payment by the Contractor, withhold payments due to the Contractor, and order that all work be stopped. Should JWA stop work, such work may only resume upon Contractor submission, and upon JWA approval, of a revised SWPPP. Contractor is not entitled to damages as a result of such stoppage of work. Failure of the Contractor to comply with the JWA-approved SWPPP, or any revised SWPPP, or otherwise comply with SWPPP requirements of this Agreement may constitute a material breach of this Agreement. Delays to the Schedule that may be incurred by the Contractor resulting from an unacceptable SWPPP, revised SWPPP, or work stoppage for reasons related to its SWPPP are inexcusable and non-compensable.

30. **Construction Execution Plan:** Contractor shall submit to County for approval a Construction Execution Plan (CEP) for the work within ten (10) calendar days of the Contract Award Date in accordance with the General Requirements. County shall have up to fourteen (14) calendar days to approve or disapprove such plan. The failure by the Contractor to submit an acceptable CEP as provided hereinabove, or meet the CEP requirements of this Agreement, shall be grounds for the County to reject, in its entirety, any request for payment by the Contractor, withhold payments due to the Contractor, and order that all work be stopped. Should County stop work, such work may only resume upon Contractor submission, and upon County approval, of a revised CEP. Contractor is not entitled to damages as a result of such stoppage of work. Delays to the Schedule that may be incurred by the Contractor resulting from an unacceptable CEP, revised CEP, or work stoppage for reasons related to its CEP are inexcusable and non-compensable.

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

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

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

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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.

32. **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 John Wayne Airport. 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.

33. **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:

    A. 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;

    B. 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.

    C. Terminate the Contract immediately without penalty.

34. **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.

35. **Prevailing Wage**:

    A. Threshold Requirements for Prevailing Wages: Except for public works project of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar in character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provide in this chapter, shall be paid to all workers employed on a public works project.

    B. Wage Rates: Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors or available at the website of the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

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C. Apprenticeship Requirements: The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

D. Registration of Contractor: All Contractors and Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

E. Prevailing Wage and DIR Requirement: Awarding agencies are not required to submit the notice of contract award through DIR's PWC-100 system on projects that fall within the small project exemption. The small project exemption applies for all public works projects that do not exceed:

- $25,000 for new construction, alteration, installation, demolition or repair.
- $15,000 for maintenance.

F. 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 summary:

i. The information contained in the payroll record is true and correct.

ii. The employer has complied with the requirements of Labor Code Section 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

iii. 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.

iv. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.

v. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (10) days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit $100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to who 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 penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

vi. 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 wage 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

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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.

G. Work Hour Penalty: Eight (8) hours of labor constitute a legal day's work, and forty hours (40) 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 of by any Subcontractor for each calendar day of during which such worker is required or permitted to work more than the legal day's or weeks' 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 1.5 times the basic rate of pay.

H. Apprentices: The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any Subcontractors under him employing workers in any apprenticeable craft of trade in performing any work under this Contract shall apply to the applicable joint apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any Subcontractor under him may be required to make contributions to the apprenticeship program.

The Contractor and all Subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

36. **Civil Rights and Non-Discrimination:**

A. General Civil Rights Provisions: In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

B. Nondiscrimination: In the performance of this contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

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C. Compliance with Nondiscrimination Requirements: During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-Discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21 including amendments thereto.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

    a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or

    b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter

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into the litigation to protect the interests of the United States. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate the above language has been inserted.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities: During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

2. 49 CFR part 21 (Nondiscrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq), (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

Contractor is required to insert the above Title VI List of Pertinent Nondiscrimination Acts and Authorities into every subcontract at any tier. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

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E. Civil Rights Training: Upon request by the County, Contractor is required to disseminate and provide training materials and other information related to Title VI Civil Rights to its staff as specified by the County.

37. **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.

38. **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.

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

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

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

40. **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

Job Order price	Liquidated damages per day
Up to $100,000	$500
Greater Than $100,000 Up to $500,000	$1,000

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Greater Than $500,000 Up to $1,000,000	$5,000
Greater Than $1,000,000	$10,000

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.

41. **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 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.

42. **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

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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 for 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.

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.

43. **Drawings And Specifications:**

A. Checking: The Contractor shall immediately check all drawings and owner-supplied specifications furnished to him, 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. Specifications and 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 of each

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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 are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work. When specifications and drawings are provided or referenced by the County, these are to be considered part of the Scope of Work, and to be specifically documented in the Detailed Scope of Work. For convenience, the County supplied specifications in the CTC.

44. **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.

45. **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.

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

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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 Requirements: Contractor shall comply with the written schedule provided by County, which shall clearly show the specific start and end times for each workday. In addition, Contractor shall perform the following:

i. Report to County Project Manager upon arrival to job site. County Project Manager shall ensure that the work area is clear and ready for work to begin.

ii. Follow any special security requirements issued by the County Project Manager or designee.

iii. Report immediately all accidents, spills, damage, unusual conditions and/or unusual activities to County Airport Control Desk at (949) 852-4004.

iv. Securely close and check all gates and doors to ensure that they are tightly closed and locked.

v. Restrict all activities to the immediate work site and adjacent assigned areas.

vi. Ensure that all Contractor vehicles on site shall be locked and thoroughly secured at all times.

vii. Ensure that all Contractor tools and materials shall remain in Contractor's possession at all times and shall never be left unattended.

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viii. Ensure Contractor personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and do not have such materials in their possession.

ix. Plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all tools, equipment, materials needed for the day at the start of work and restrict all breaks to the absolute minimum.

G. Security System: The site and the Work area may be protected by limited access security systems. An initial access code number will be issued to the Contractor by the County. Thereafter, all costs for changing the access code due to changes in personnel or required substitution of contracts shall be paid by the Contractor and may be deducted from payments due or to become due to the Contractor. Furthermore, any alarms originating from the Contractor's operations shall also be paid by the Contractor and may be deducted from payments due or to become due to the Contractor.

H. 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 in the Job Order Schedule. All costs to obtain clearances are the responsibility of the Contractor.

I. 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.

46. **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.

47. **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 John Wayne Airport. If the dispute is not resolved, the Contractor agrees he will neither rescind this Contract nor stop the progress of the Work.

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

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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 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.

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(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 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 John Wayne Airport 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 John Wayne Airport 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.

48. **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

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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: John Wayne Airport Administration
Attn: Lawrence Lei, Contract Administrator/PM
3160 Airway Ave.
Costa Mesa, CA 92626
714-914-0465
llei@ocair.com

cc: John Wayne Airport Administration
Attn: Tim Shears, Deputy Procurement Agent
3160 Airway Ave.
Costa Mesa, CA 92626
949-624-1628
tshears@ocair.com

Contractor: Prime ENC, Inc.
Attn: Caleb Lee
2629 W Woodland Drive
Anaheim, CA 92801
714-502-4843
Attn: info@primeencinc.com

49. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

50. **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.

51. **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.

52. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

53. **Warranty Work/Guarantees:**

Contractor warrants that materials and equipment furnished under the Contract Documents will be new, of good quality, and carrying all available manufacturers and installers' warranties; that construction will

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be of good and workmanlike quality; and that all of the work shall be performed in strict conformance with the requirements of the Contract Documents industry standards, and manufacturers' recommendations. 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.

Work not conforming to these requirements shall be considered defective ("Defective Work"). Defective Work does not include damage caused by modifications not executed by Contractor, improper operation or maintenance, or normal wear and tear.

A. Correction Period On Defective Work: Contractor shall take immediate action to correct any Defective Work reported by the County orally or in writing. Failure by the Contractor to take corrective action on Defective Work within twenty-four (24) hours after notification on items affecting essential use of a facility, safety or the preservation of property, or within ten (10) calendar days following notice on other Defective Work, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County because of Contractor's failure to correct Defective work will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.

B. Manufacturers and Installers' Warranties: All manufacturers' and installers' warranties received by Contractor shall be assignable to County, and upon abandonment, termination, or completion of the Agreement shall be deemed, and hereby are, assigned to County. Contractor shall take all actions necessary to preserve the full scope of all manufacturers' and installers' warranties for the benefit of County and shall take no action that would impair County's rights under any such warranties. Before Owner's acceptance of the work, Contractor shall deliver to County manufacturers' and installers' warranties, guarantees, instruction sheets, and parts lists, which are furnished with certain articles of materials incorporated in the work.

C. Survival**:** All of Contractor's warranty obligations shall survive abandonment, termination, and completion of the Contract. Neither Final Payment nor any other provision in the Contract Documents shall constitute County's acceptance of work not performed in accordance with the Contract Documents nor relieve Contractor of liability with respect to its warranty obligations or for Defective Work.

54. **Patent Infringement**:

A. The Contractor shall report to John Wayne Airport, 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.

56. **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

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indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

57. **Termination For Cause & Damages For Delay:**

A. If the Contractor refuses or fails to prosecute the Work with such diligence as will ensure 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 John Wayne Airport grants a further period of time before the date of final payment under the Contract), notifies John Wayne Airport in writing of the causes of delay.

iii. John Wayne Airport shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. John Wayne Airport 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.

a. 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.

58. **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

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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.

59. **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.

60. **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.

61. **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.

62. **Performance:** Contractor shall perform all Work under this Contract, taking necessary steps and precautions to perform the Work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all Work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Work; and, if permitted to subcontract, shall be fully responsible for all Work performed by subcontractors.

63. **Insurance Provisions:**

Prior to the provision of services under this Contract, Contractor shall carry all required insurance at Contractor's expense, including all endorsements required herein. Contractor agrees to keep such insurance coverage current and provide a Certificate of Insurance and endorsements to the County during the entire term of this Contract.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer. Any failure on the part of the County to monitor or enforce compliance with any of the insurance requirements shall not be construed as a waiver of any required insurance provisions herein.

Evidence of Insurance

Insurance certificates and all endorsements shall be forwarded to the County agency/department. The name of the Insured Party on the Certificate of Insurance shall match the name of the Contractor identified in the Contract.

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

Failure to maintain and/or provide evidence of insurance acceptable to the County for the full term of this Contract shall constitute a material breach, upon which the County may terminate this Contract.

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Cancellation and Changes in Insurance

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.

Insurance requirements are subject to periodic review by County. County retains the right to require additional types of insurance coverage or higher limits throughout the term of this Contract. Any change will be deemed by County Risk Manager as appropriate to adequately protect County's risk. County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) 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.

Subcontractor Insurance Requirements

All subcontractors performing work on behalf of Contractor pursuant to this Contract shall be included under Contractor's insurance as an Additional Insured or shall maintain insurance subject to the same requirements as Contractor *(unless specified below).* Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. Contractor shall provide the insurance requirements to every subcontractor and shall be responsible for verifying each subcontractor complies with the required insurance prior to allowing any subcontractor to begin work. Evidence of subcontractor's insurance must be maintained by Contractor through the entirety of this Contract for inspection by County at any reasonable time.

Self Insured Retention (SIR)

All SIR's shall be clearly stated on the Certificate of Insurance. Any SIR above 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 as evidence it can support the SIR.

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).

Waiver of subrogation

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

Umbrella or Excess Insurance

If Contractor utilizes combination of umbrella or excess policies to satisfy the required insurance, these policies must "follow form" and afford no less coverage than the primary policy**.**

Insurance Coverages and Limits:

Contractor shall maintain throughout the contract the minimum limits and coverage as set forth below.

1. Commercial General Liability

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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 policy shall contain a severability of interests "separation of insureds" clause and include coverage for products completed operations, personal and advertising, and contractual liability.

A. Minimum Limits $3,000,000 per occurrence; $2,000,000 aggregate

B. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** as Additional Insureds, or provide blanket coverage which shall state As Required by Written Contract.

C. 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 shall be excess and non-contributing.

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

2. Auto Liability

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad. The policy shall include coverage for owned or scheduled (if applicable), non-owned , and hired vehicles.

Minimum Limits $1,000,000 combined single limit each accident

(Auto Liability Limit is increased when access to Commercial Ramp Area/Air Operation Area).

A. $5,000,000 combined single limit each accident

3. Worker's Compensation and Employer's Liability

Coverage is required for all employees providing services pursuant to the Contract. Worker's Compensation coverage shall have statutory limits and meet all the requirements of the State of California Labor Code.

A. Employer's Liability policy with minimum limits of $1,000,000 per accident or disease

B. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** or provide blanket coverage, which will state As Required by Written Contract.

If Contractor has no employees, it may certify to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code by signing a County waiver. The waiver shall be reviewed and will require approval by County Risk Manager or designee.

4. Pollution Liability

Coverage may be standalone or combined with another Liability policy. If combined, the total combined limit shall be the same or greater than if the policies were separate.

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, contaminants, (**and non-owned disposal sites if applicable)**.

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A. Minimum Limits $1,000,000 per occurrence or claims made; $2,000,000 aggregate.

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

C. 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.

Claims Made Coverage

If Pollution Liability is written on a Claims Made basis, Contractor shall agree to the following:

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

B. 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.

C. 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 a claim extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract services.

64. **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 **$2,000,000** in accordance with Section 9554 of the Civil Code, and one surety bond in the amount of **$2,000,000** guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed **$2,000,000** 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.)

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 John Wayne Airport, the Contractor shall promptly furnish such additional security as may be required by John Wayne Airport 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.

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65. **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.

66. **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 82 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.

67. **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.

68. **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.

69. **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.

70. **Confidentiality:** Contractor agrees to maintain the confidentiality of all 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.

71. **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.

    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

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Contract.

72. **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.

73. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

74. **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.

75. **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.

76. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

77. **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.

78. **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.

79. **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.

80. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

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81. **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.

82. **Cultural/Scientific Resource Finds:** If the Contractor's operations uncover or Contractor's employees find any burial grounds or remains, ceremonial objects, petroglyphs, and archaeological or paleontological or other artifacts of like nature within the construction area, Contractor shall immediately notify the County of Contractor's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such finding from the County. Should the findings, or notification as to disposition of findings, require additional work, a 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.

83. **Campaign Contribution Disclosure Requirements**: 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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IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

Prime ENC, Inc.
a *Cali* Signed by: ion
Inock Lee
6DB1C6DC73FF4E8...

Date: 10/21/2026 By _____
Signature

Inock Lee 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.)

DocuSigned by:

Date: 10/21/2026 By CA0685E1C42448C... _____
Signature

Ted Lee Secretary
Print Name & Title

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

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

Date: _____ By _____

Print
Name _____

Title _____

APPROVED AS TO FORM
Office of the County Counsel
Orange Signed by: a
Tracy Doudt
E640EE305057432...

By: _____
Deputy

Date: 10/23/2026

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ATTACHMENT A
SCOPE OF WORK

I. SCOPE OF WORK: Contractor shall provide all labor, materials, permitting (including fees), tools, equipment, utilities, vehicles, and transportation services required to provide **General Contracting Services** under this Aggregate Job Order Contract on an "as-needed" basis. No specified amount of work is guaranteed to the Contractor, and no Contractor shall be issued task orders under this Aggregate Contract if the sum of such task orders would exceed the statutory maximum permitted by Public Contract Code § 20128.5 and Contract Policy Manual § 3.5-114(1)(d). Services may be provided, but may not be limited to, any facility or property which is owned, operated, or maintained by the County. **General Contracting 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 October 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 are not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, and standard specifications from other local, state and federal agencies.

C. 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 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. The maximum amount of work which the Contractor will receive the opportunity to perform under this Contract will be the maximum amount as noted in the Notice Inviting Bids. There is no guaranteed minimum contract amount.

B. This is a Contract for **General Contracting Services** of items specified in individual Job Orders and shall be effective in accordance with Article 2, Term.

C. 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.

D. Work ordered prior to but not completed by the expiration of the contract period will be completed, with all provisions of this Contract still in force, on or before 180 days from the expiration of the Contract. Job Order Completion Time for each Job Order will be determined in accordance with the Contract. This Job Order Completion Time will be determined and agreed upon for each individual Job Order.

E. This is an indefinite-quantity Contract for the supplies or services specified and effective for the period stated. Work or performance shall be made only as authorized by 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 specified in the Contract up to and including the quantity designated in the Job Orders issued as the maximum designated in the Contract. Contractor acknowledges, consents and agrees that Contractor is not guaranteed to receive any minimum amount of work by virtue of being a party to this Contract. No Contractor shall be issued task orders under this Aggregate Contract if the sum of such task orders would exceed the statutory maximum permitted by Public Contract Code § 20128.5 and Contract Policy Manual § 3.5-114(1)(d).

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III. ORDERING PROCEDURES:

A. Joint Scope Meeting and Job Order Development:

County will issue, for each individual 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 or at a designated location. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

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, traffic controls, permits (if applicable), 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, including permitting from regulatory agencies for work
13. Date on which the Job Order Proposal is due

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for the Contractor, for individual 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. If consultant services are required to clarify project requirements, they will be completed and submitted with the Scope of Work for County approval before a Request for Quote will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the Contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Scope of Work, the Contractor agrees to submit a revised Scope of Work reflecting all requested changes within forty-eight (48) hours.

B. 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. Contractor agrees to prepare and submit a Quote of Work.

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C. Quote Development

Contractor Job Order Proposal shall be comprised of the following elements:

1. Job Order Price Proposal

   a. Pre-Priced Work Requirements: Pre-Priced work requirements will identify the type and number of work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article.

   b. Contractor's Job Order Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done and that the work tasks proposed are reasonable for the Detailed Scope of Work. Documentation to be submitted shall include, but not be limited to, shop drawings, calculations, catalog cuts, and specifications.

   c. The total extended price for Pre-Priced work requirements will be determined by multiplying the price per unit by the quantity required 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 CTC if determined appropriate by County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Proposal. Whether a work requirement is Pre-Priced or Non-Pre-Priced is a final determination by County, binding and conclusive on Contractor.

   b. Information submitted in support of Non-Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including work unit content, work unit costs 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 County, cost data shall be submitted demonstrating that Contractor solicited and received three (3) bids. Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. County may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. 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 CTC multiplied by the quantity;

      B = The rate for each piece of equipment not in the CTC multiplied by the quantity;

      C = Lowest of three (3) independent quotes for all materials.

      Total for Non-Pre-priced Tasks performed with Contractor's Own Forces = (A+B+C) x Factor of 1.05.

      Subcontractor performed duties

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If the Non-Pre-Priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three (3) Subcontractor Quotes

Total Cost for Non-Pre-Priced Tasks performed by Subcontractors = D x Factor of 1.05

After being used on three (3) 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. Any modification of or substitution to the negotiated and finalized Non-Pre-Priced Tasks in any form by the Contractor will require the Non-Pre-Priced Tasks to be re-negotiated between the County and the Contractor. Any delay to the scheduled Work as a result of this action, as determined by the County Project Manager, shall be the sole responsibility of the Contractor to address and correct to the satisfaction of the County.

The County's determination as to whether a task is a Pre-Priced Task or a Non-Pre-Priced Task shall be final, binding, and conclusive as to the Contractor.

3. Total Fixed Job Order Price Proposal
The total fixed price of the Job Order shall be determined by adding the total 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. Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

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, Contractor agrees to request additional instruction from County. The request must be submitted so that the submittal of the Job Order Proposal is not delayed. Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At 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 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-

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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 4113, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name, business location and the California Contractor License number of each Subcontractor that will perform Work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Quote amount. Contractors and Subcontractor which have been debarred from public works projects by the Labor Commissioner may not perform Work under this Contract. The Contractor agrees to list project percentage of proposed Subcontractor and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of subcontract work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

7. Electronic Quote

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

8. Complete Quote

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Contractor shall confirm receipt of the Request for Quote within twenty-four (24) hours and submit Detailed Scope of Work and Cost Proposal within five (5) working days unless otherwise authorized in writing by County. All incomplete Job Order Proposals shall be rejected. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly. The due date will be so indicated on the Request for Quote or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

By submitting a signed Proposal, Contractor agrees to accomplish the work outlined in the RFQ and the Detailed Scope of Work for that Job the necessary line items and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to submitting it to County. Errors and omissions in the Price Proposal shall be the responsibility of Contractor. All costs associated with preparing proposals shall be the responsibility of Contractor. County makes no commitment as to the award of individual Job Orders.

D. 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.

The Contractor may choose the means and methods of construction; subject, however, to the County's right to reject any means and methods proposed by the Contractor that:

1. Will constitute or create a hazard to the work, or to persons or property;

2. Will not produce finished work in accordance with the terms of the Contract; or

3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

E. Project Approval

County may issue a Job Order Authorization for the Work, to include the firm-fixed-price of the Job Order and the project duration. Contractor agrees that all clauses of this Contract are applicable to any Job Order issued hereunder.

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.

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 and/or line item activities or tasks that are inadequate or inconsistent in the sole opinion of the County.

County also reserves the right to not issue a Job Order Authorization if the County's requirement is no longer valid or the project is not funded or for any reason deemed to be in the best interest of the County. 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.

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In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the County. The Contractor shall begin work as directed, notwithstanding the absence of a fully developed Request for Quote, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

F. Quote Time Requirements

1. Quote Submittal

Contractor shall confirm receipt of the Request for Quote within twenty-four (24) hours and submit Detailed Scope of Work and Cost Proposal within five (5) working days unless otherwise authorized in writing by County.

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

Contractor's project manager or agent agrees to be available for Quote review meetings within twenty-four (24) hours of being notified by County (via fax, e-mail, telephone, etc.). After review of the Quote, Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County. In the event the County Project Manager and Contractor's Project Manager or agent cannot agree on the terms and conditions of the Quote (e.g. schedule, etc.) County may cancel the Request for Quote from Contractor and solicit another Contractor.

3. Quote Modification

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. Contractor agrees to submit the revised Quote within twenty-four (24) hours of the initial Quote review meeting, unless otherwise authorized in writing by the County. Upon review of the revised Quote, Contractor agrees to remove all line items or adjust quantities deemed inappropriate by County, and re-submit its Quote within twenty-four (24) hours. No new line items or modifiers may be added to the revised Quote, nor may quantities be increased, 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. County may cancel the Request for Quote from Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. Job Order Authorization (JOA)

Upon approval of the Scope of Work and the Contractor's Quote, County will issue a Job Order Authorization to Contractor. The Job Order Authorization will include the firm fixed price of the Job Order and the project duration. 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.

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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. Contractor agrees to begin and complete construction within the dates specified on the NTP. 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

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 submit 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 agrees to include the various areas of the jobsite where Work was performed and

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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 Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by 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

Contractor agrees to schedule a final job walk with County. If required, County will prepare a list of incomplete items, the "Punch List." Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. County will sign the "Punch List" as completed when determined, the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by County;
2. Completed building inspection card;
3. Contractor's daily log for the entire duration of the Job Order;
4. All required warranties and maintenance requirements;
5. All record drawings or as-built drawings;
6. All required operation and maintenance manuals;
7. All keys and security entry cards;
8. 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. Job Orders (including Scope of Work)

B. County - Contractor Contract

C. Project manual

D. Construction Task Catalog®

E. County Standard Plans

F. Technical Specifications

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G. Construction Specifications Institute/Green Book/FAA/Caltrans

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

A. Except as noted, Contractor agrees to obtain and pay for all permits required for the work. Further, Contractor agrees to obtain and pay for all permits incidental to the work or made necessary by Contractor's operation. Contractor agrees to obtain all building permits. Contractor will be reimbursed for all direct costs of permits without mark-up. 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 County. County is not responsible for any re-inspection(s) required due to Contractor's failure to pass initial inspection(s).

B. Contractor will be required to obtain a city business license to perform the work in the appropriate city, along with an insurance certificate to add the City as an additional insured, construction and encroachment permits, and other documents requested by the City as specified in the Job Order.

C. To comply with Section 3800 of the Labor Code of the State of California, Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with County.

D. Exclusive of off-site inspection specified to be County's responsibility, 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. 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 Contractor.

F. County will inspect the work for code compliance as part of permits pulled. County will provide this inspection at no additional cost for the first inspection and for re-inspection as appropriate. If Contractor is unable to correct defective work after one re-inspection County may charge Contractor for additional re-inspection.

G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.

H. Corrections to work may be required during the work or the warranty period. 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. County will not pay any costs for licenses required in the performance of the work. Contractor agrees to assume this responsibility in total.

K. As required by the Detailed Scope of Work for a specific Job Order, 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 the California Department of Fish and Game, US. Army Corps of Engineers, California Regional Water Quality Control Board. 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. All California Storm Water Quality Association (CASQA) Construction

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BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. County will not reimburse these costs.

M. As required by the Detailed Scope of Work, per a specific Job Order the following permits may apply and will be provided by the County:

1. NPDES Dewatering Permit
2. NPDS Municipal Storm Water Sewer System Permit
3. NPDES General Construction Permit
4. Any site specific permits identified by County

N. If applicable, the NPDES Watering Permit shall be provided in accordance with the following:

1. Construction Related Dewatering & De Minimus Discharges, Santa Ana Region:

a. The County has been issued Municipal NPDES Permit No. CAS618030, Order No. R8-2009-0030, from the California Regional Water Quality Control Board, Santa Ana Region. Section III.3.ii. of this permit authorizes de minimus types of discharges listed in the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, from County owned and/or operated facilities and activities (including construction), outside of the Newport Bay watershed.

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

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf

c. A copy of the Santa Ana Regional Board's General De Minimus Permit for Discharges to Surface Waters (Order No. R8-2009-0003) may be found on the internet at:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf

d. For de minimus discharges outside of the Newport Bay Watershed, the Contractor is hereby directed to read and thoroughly comply with the language in Section III.3.ii. of the County's Municipal NPDES Permit (Order No. R8-2009-0030) and to consult the General De Minimus Permit (Order No. R8-2009-0003) for the types of de minimus discharges which are covered.

O. National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction And Land Disturbance Activities Water Quality Order 2009-0009-Dwq (CGP):

1. On September 2, 2009, the State Water Resources Control Board adopted Order No. 2009-0009-DWQ (Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities and Land Disturbance Activities). Effective July 1, 2010, all dischargers are required to obtain coverage under the Construction General Permit Order 2009-0009-DWQ (CGP). Construction sites shall obtain permit coverage at the appropriate Risk Level as determined by the Risk Assessment Procedures described in subsection f below. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem necessary.

A copy of these documents may be found on the internet at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf

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2. Prior to commencing Work, the Contractor shall submit the required PRDs (Permit Registration Documents) to the County Project Manager. If any of the required items are missing, the PRD submittal is considered incomplete and will be rejected. Upon receipt and acceptance of a complete PRD submittal, the County Project Manager will electronically submit these documents to State Water Board through the California Integrated Water Quality System (CIWQS) Project's Storm water Multi-Application Reporting and Tracking (SMART) system to obtain coverage under the General Permit.
3. Standard PRD Requirements
    1. Notice of Intent
    2. Risk Assessment (Standard or Site-Specific)
    3. Site Map
    4. SWPPP
    5. Annual Fee
    6. Signed Certification Statement
4. Additional Permit Registration Document (PRD) Requirements Related To Construction Type
    1. If Contractor proposes to implement an Active Treatment System (ATS) on a Specific Job Order, Contractor shall submit:
        i. Complete ATS Plan in accordance with Attachment F of the CGP at least 14 days prior to the planned operation of the ATS and a paper copy shall be available onsite during ATS operation.
        ii. Certification proof that the preparation and design was accomplished by a qualified professional in accordance with Attachment F of the CGP.
    2. Dischargers who are proposing an alternate Risk Justification shall submit:
        i. Particle Size Analysis.
5. Exception to Standard PRD Requirements
    1. Construction sites with less than one (1) acre of disturbance or an R value less than five (5) as determined in the CGP Risk Assessment from the Revised Universal Soil Loss Equation (RUSLE) are not required to submit a SWPPP.
6. Description of PRDs
    1. Notice of Intent (NOI) or Notice of Construction Activity (NOCA)

        The Notice of Intent or Notice of Construction Activity must be filled out electronically on-line through the State's SMART System. Contractor shall coordinate with the County Project Manager to provide the required information to fill out the NOI on-line form. Upon receipt of all required information (including all items required below), County staff will electronically submit the Project information through the SMART system.
    2. Site Map(s) Includes
        i. The project's surrounding area (vicinity)
        ii. Site layout
        iii. Construction site boundaries
        iv. Drainage areas
        v. Discharge locations
        vi. Sampling locations

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vii. Areas of soil disturbance (temporary or permanent)
viii. Active areas of soil disturbance (cut or fill)
ix. Locations of all runoff BMPs
x. Locations of all erosion control BMPs
xi. Location of all sediment control BMPs
xii. ATS locations (if applicable)
xiii. Location of sensitive habitats, watercourses, or other features which are not to be disturbed
xiv. Locations of all post construction BMPs
xv. Location of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling and water storage, water transfer for dust control and compaction practices

3. Storm Water Pollution Prevention Plan (SWPPP)

The Contractor will need to submit a site-specific SWPPP for review, approval, and certification by the County prior to submittal to the State's SMART system and prior to start of mobilization and construction activity and will comply with the approved SWPPP and with any subsequent amendments to the SWPPP.

NO CONSTRUCTION ACTIVITY CAN BE ALLOWED UNTIL THE COUNTY RECEIVES A "WDID" NUMBER FROM THE REGIONAL BOARD.

Full compensation for conforming to the requirements of this section shall be considered as included in the Adjustment Factor and no additional compensation will be allowed therefor.

The Contractor must amend the SWPPP from time to time during the course of Work to reflect actual construction progress and construction practices.

The SWPPP shall not be construed to be a waiver of the Contractor's obligation to review and understand the CGP before submitting a bid. By submitting a bid, the Contractor acknowledges that he has read and understands the requirements of the CGP and will fully comply with the requirements of the CGP.

4. Annual Fee (if applicable)

The annual fees are established through regulations adopted by the State Water Board. The total annual fee is the current base fee plus applicable surcharges for the total acreage to be disturbed during the life of the Project. Annual fees are subject to change by regulation. The County will be not invoiced annually until the Project is complete and the Notice of Termination (NOT) submitted to the Regional Board. The cost per acre fee is based upon a table provided at the following website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/sw_feeschedules2008.pdf

The Contractor shall be responsible for paying the CGP permit fees until the Project NOT has been filed and accepted by the Regional Board. The Contractor shall be responsible for determination of the permit fees based upon his proposed construction operations and total disturbed areas. Contractor shall submit permit fees to the County Project Manager for verification, and County will submit the fee to the Regional Board.

5. A Signed Certification Statement must be submitted by the Legally Responsible Party (LRP). The County Project Manager will coordinate with the Contractor to acquire relevant information for the certification. The County will submit the certification statement.

6. Risk Assessment

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The Contractor shall use the Risk Assessment procedure as describe in the CGP Appendix 1.

i. The Standard Risk Assessment includes utilization of the following:

1) Receiving water Assessment Interactive map

2) EPA Rainfall Erosivity Factor Calculator Website

3) Sediment Risk interactive map

4) Sediment sensitive water bodies list

ii. The site-specific Risk Assessment includes the completion of the hand calculated R value Risk Calculator in the Revised Universal Soil Loss Equation (RUSLE).

7. Post Construction Water Balanced Calculator (if applicable)

The Contractor shall complete the Water Balance Calculator (in Appendix 2 of the General Permit) in accordance with the instructions when subject to this requirement. (Note to Engineer: This paragraph will only apply when DISTRICT or the County does not have a current MS4 (Municipal) permit in place.)

8. ATS Design Document and Certification

The Contractor using ATS must submit electronically their system design (as well as any supporting documentation) and proof that the system was designed by a qualified ATS design professional (See Attachment F of the General Permit).

P. Best Management Practices (PMF9.2S)

Contractor and all of Contractor's, subcontractors, agents, employees and contractors shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("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. If Work identified under a Specific Job Order does not fall within statewide Painting Permit, Contactor shall implement appropriate BMPs consistent with County's DAMP/LIP.

Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP specified in DAMP/LIP. Any such alternative BMPs shall be submitted to the County Project Manager for review and approval prior to implementation.

VII. GENERAL REQUIREMENTS:

A. Contractor must ensure all precautions for safety are taken. Contractor to comply will all Federal, State and Local requirements, codes, and laws.

B. Contractor 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, John Wayne Airport 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. Contractor shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.

F. Contractor shall secure all Work areas prior to the end of each workday.

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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. Contractor shall possess a current State of California **Class B** 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 John Wayne Airport.

K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.

L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.

M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.

N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract, and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 p.m. and 7 a.m. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.

O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area which are shown on the plans are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is

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required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.

Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

The Contractor shall conduct its operations in such a manner that storm or other waters may proceed without diversion or obstruction along existing street and drainage courses. Drainage of water from existing or proposed catch basins shall be maintained at all times. Diversion of water for short reaches in order to protect construction in progress will be permitted if public or private properties are not damaged or, in the opinion of the Project Manager, are not subject to the probability of damage. Contractor shall at no cost to County obtain written permission from the appropriate public agency or property owner before any diversion of water will be permitted by the Project Manager.

During the course of water control the Contractor shall conduct construction operations to protect waters from being polluted with fuels, oils, 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.

VIII. STOP WORK:

The County may, at any time, by written stop Work order to Contractor, require 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

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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, 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, 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.

X. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

B. Software

1. Job Order Contracting Software

The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the County. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a **1%** JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

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 Exhibit A

2. P6 Primavera Scheduling Software

The Contractor shall prepare, submit, and maintain all project schedules using Oracle Primavera P6 Professional scheduling software. Use of any other scheduling software is prohibited unless expressly approved in writing by the Owner or the Owner's Authorized Representative.

3. Oracle Unifier (Project Management Information System)

The Contractor shall utilize the Owner's designated **Project Management Information System (PMIS), Oracle Unifier**, for all project management, cost control, document management, and workflow processes associated with each Job Order. Use of any alternate PMIS is prohibited unless expressly approved in writing by the Owner.

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The Contractor shall use Oracle Unifier for, at a minimum, the following functions:

- Job Order proposals and revisions
- Cost tracking and forecasting
- Change management (Potential Change Notices, Change Orders, and Amendments)
- Pay applications and invoicing
- Schedule integration and milestone tracking
- Submittals, RFIs, and correspondence
- Document control and record retention

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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 other

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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 **General Contracting 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 Aggregate 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 six 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** - The first Adjustment Factor is to be applied to work anticipated to be performed during Normal Working Hours (7:00 AM to 5:00 PM), in the airport-secured area..

1.2500

Utilize four decimal places

ii. **FACTOR 2** – The second Adjustment Factor is to be applied to work anticipated to be performed during Normal Working Hours (7:00 AM to 5:00 PM), in the airport non-secured area.

1.0800

Utilize four decimal places

iii. **FACTOR 3** - The third Adjustment Factor is to be applied to work anticipated to be performed during Other Than Normal Working Hours (Weekdays 5:01 PM to 6:59 AM, County Holidays, and Weekends), in the airport-secured area.

1.4500

Utilize four decimal places

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iv. **FACTOR 4** - The fourth Adjustment Factor is to be applied to work anticipated to be performed during Other Than Normal Working Hours (Weekdays 5:01 PM to 6:59 AM, County Holidays, and Weekends), in the airport non-secured area.

1.1500

Utilize four decimal places

v. **FACTOR 5** - The fifth Adjustment Factor is to be applied to work anticipated to be performed during an emergency at any time of the day, during the Workweek, County Holidays, or Weekends, in the airport-secured area.

1.4500

Utilize four decimal places

vi. **FACTOR 6** - The sixth Adjustment Factor is to be applied work anticipated to be performed during an emergency at any time of the day, during the Workweek, County Holidays, or Weekends, in the airport non-secured area.

1.1500

Utilize four decimal places

B. TOTAL AGGREGATE CONTRACT AMOUNT SHALL NOT EXCEED: **$8,000,000**

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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 photocopying, 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:

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

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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 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.

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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 or on a County Payment Request form 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. A unique invoice number (not 1, 2, 3)
5. County Contract number (MA and DO)
6. Service date(s)
7. Service description
8. Contractor's Federal I. D. number
9. Updated duration schedule (if applicable)
10. An updated schedule of values (if applicable)
11. Releases
12. Total

Invoices and support documentation shall be submitted to the following address:

Emailed To: AccountsPayable@ocair.com

and

County of Orange/John Wayne Airport
Attn: Lawrence Lei *County Project Manager*
3160 Airway Avenue
Costa Mesa, California 92626

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.