

*County of Orange, OC Public Works
A.J. Fistes Corporation*

MA-080-21010384

(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.

(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.

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(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 OC Public Works promptly as the alleged facts giving rise to, or the alleged bases for, the claim become known to the Contractor; any such claim not promptly so submitted to OC Public Works shall be deemed waived; and in no event shall a claim for additional compensation be asserted or be assertable after completion or cessation of the Work.
44. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the Work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All

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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: **Jennifer Carroll**, Contract Administrator
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701
(714) 667-4942
Jennifer.Carroll@ocpw.ocgov.com

cc: OC Public Works/ Procurement Services
Attn: **Jennifer Mason**
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701
(714) 667-9691
Jennifer.Mason@ocpw.ocgov.com

Contractor: A.J. Fistes Corporation
2214 Atlantic Ave.
Long Beach, CA 90806
(562) 424-2230
AJFistes@gmail.com

45. **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.
46. **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.
47. **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.
48. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
49. **Warranty Work:** Failure by the Contractor to take corrective action within twenty four (24) hours after personal or telephonic notice by the County's OC Public Works on items affecting essential use of the facility, safety or the preservation of property, and within ten (10) calendar days following written notice on other deficiencies, will result in the County taking whatever

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corrective action it deems necessary. All costs resulting from such action by the County will be claimed against Contractor or, if necessary, the Contractor's Performance Bond.

50. Patent Infringement:

- A. The Contractor shall report to OC Public Works, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.
- B. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.

51. Assignment: Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the County Purchasing Agent or designee, to a bank, trust company, or other financing institution and may thereafter be further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the County Project Manager enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

52. Termination for Cause & Damages For Delay:

- A. If the Contractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said Work within such time, the County Project Manager may, by written notice to the Contractor, terminate his right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the Project and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Project such materials, appliances, and plant as may be on the site of the Project and necessary therefore. Whether or not the Contractor's right to proceed with the Project is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the Project within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the County takes over the Project or otherwise incurs damages as a result of Contractor's default, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Project in completing the Project as well as any other damages incurred by County.
- C. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - i. The delay in the completion of the Project arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to,

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acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

- ii. The Contractor, within ten days from the beginning of any such delays (unless OC Public Works grants a further period of time before the date of final payment under the Contract), notifies OC Public Works in writing of the causes of delay.
- iii. OC Public Works shall ascertain the facts and the extent of the delay and extend the time for completing the Project when, in its judgment, the delay is justified. OC Public Works shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to as the procedures provided in Article 43 of these Articles.

D. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

53. **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 III. "Performance Requirements" and such payment shall be Contractor's sole remedy under this Contract. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop Work on the date of and to the extent specified in a notice of termination and shall require sub-consultants to insert the same condition in any lower tier subcontracts.
54. **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.
55. **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.
56. **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.
57. **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

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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.

58. **Insurance Provisions:** Prior to the provision of services under this Contract, CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy OWNER that the insurance provisions of this Contract have been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with OWNER during the entire term of this Contract. In addition, all Subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. OWNER reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. All Subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

CONTRACTOR shall ensure that all Subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall be covered under Contractor's insurance as an additional insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by OWNER from CONTRACTOR under this Contract. It is the obligation of CONTRACTOR to provide notice of the insurance requirements to every Subcontractor and to receive proof of insurance prior to allowing any Subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

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

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

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

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

Qualified Insurer

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

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

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

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

Required Coverage Forms

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

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

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1)An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN CONTRACT.***

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

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

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

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

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

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

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

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

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

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

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

60. **Bonds:** The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for \$1,000,000, in accordance with *Section 9554 of the Civil Code*, and one surety bond in the amount of \$1,000,000, guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed \$1,000,000, 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.)

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

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

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

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

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

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

62. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. Contractor shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article 22 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
63. **Changes:** The County may, at any time, by written order, and without notice to the sureties, make changes in accordance with the terms and conditions of this Contract.
64. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
65. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to

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- County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
66. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
67. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article 22 above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
68. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
69. **Intentionally left blank.**
70. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
71. **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.
72. **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.
73. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
74. **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.
75. **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.
76. **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

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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.

77. **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.
78. **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.
79. **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.

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

A.J. FISTES CORPORATION,
a California Corporation

Date: 10/5/2020

By Jake Fistes
Signature
Jake Fistes Vice
President
Print Name & Title

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

Date: 10/5/2020

By Niki Fistes
Signature
Niki Fistes 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 County, California

By: Mark Sanchez
Print Name Mark Sanchez 10/5/2020

ATTACHMENT A**SCOPE OF WORK**

- I. SCOPE OF WORK:** Contractor shall provide all labor, materials, tools, equipment, utilities, vehicles, and transportation services required to provide Painting Services under this Contract. Services may be provided, but may not be limited to, any facility or property which is owned, operated, or maintained by the County. Painting 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 June 2020 (to be available for download after the Pre-Bid Meeting).
 - B. All other requirements identified specifically in A Job Order Detailed Scope of Work, which include but not limited to drawings, additional specifications, as-built records, sketches, written scope narratives, standard specification 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. There is no guaranteed minimum amount of work which will be ordered under this Contract.
 - B. The total Contract amount will not exceed \$1,000,000.
 - C. This is a Contract for work specified in individual Job Orders. Work ordered prior to but not completed by the expiration of the Contract period, and any additional work required as a result of unforeseen conditions encountered during construction up to six (6) months after the contract expiration date, will be completed with all provisions of this Contract still in force. Performance time for each Job Order issued under this Contract will be determined in accordance with the Contract. This performance time will be determined and agreed upon by both Parties for each individual Job Order. Contractor must self-perform 20% of the Work under this Contract for 'A' and 'B' licenses. Contractor must self-perform 75% of the Work under this Contract, unless otherwise approved by the County, for 'C' licenses.
 - D. 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.
- III. ORDERING PROCEDURES:**
- A. Joint Scope Meeting and Job Order Development:
The County will issue, for each individual project, a Brief Scope of Work and joint scope invitation requesting the Contractor's Superintendent and/or the County's end user representative, to meet at the project site. Upon receipt of this notification, the Contractor agrees to respond to the County within two (2) working days by establishing verbal contact with the County. The County, Contractor and other necessary parties will visit the proposed Work site and participate in a joint scope meeting, which will include discussion and establishment of the

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following:

- Detailed Scope of Work
- Definition and refinement of requirements
- Existing site conditions
- Methods and alternatives for accomplishing Work
- Requirements for plans, sketches, shop drawing(s), submittals, etc.
- Tentative duration Work schedule
- Preliminary quantity assumptions/estimates
- Staging areas and site access
- Special conditions regarding unique facility operations
- Safety requirements
- Hazardous Materials or site conditions
- Other project requirements

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of Work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators, and means of communications 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. The Contractor agrees to prepare and submit a Quote of Work.

C. Quote Development

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

1. Detailed Cost Quote

- a. Pre-Priced Work requirements: Pre-Priced Work requirements will 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.

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The Contractor's Quote shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Scope of Work. Documentation to be submitted with the Quote shall include, but not be limited to, shop drawings, calculations, Catalog® cuts, and specifications.

- b. The total extended price for Pre-Priced Work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the Quote will be determined by multiplying the total extended price by the appropriate Adjustment Factor.

2. Non-Pre-Priced Task Requirements

- a. Units of Work not included in the CTC, but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such Work requirements shall be incorporated into and made a part of this Contract for the Job Order to which they pertain and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non-Pre-Priced Tasks shall be separately identified and submitted in the Quote. Whether a Work requirement is Pre-Priced or Non-Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.
- b. Information submitted in support of Non-Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including Work unit content, Work unit cost data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non-Pre-Priced Tasks include a cost or price analysis report establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three (3) bids. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or subcontractors are not acceptable for if the prices are not reasonable. The Contractor agrees to provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non-Pre-Priced Task.
- c. The final price submitted for Non-Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A= The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B= The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

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

Total for a Non-Pre-Priced Task performed with Contractor's Own Forces = (A+B+C) x Factor of 1.05

Subcontractor performed duties

If the Non-Pre-Priced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the Work.

D= Lowest of three (3) Subcontractor quotes.

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Total cost of Non-Pre-Priced Tasks performed by Subcontractors = D x Factor of 1.05.

After being used on three separate Job Orders, the unit price for the Non-Pre-Priced Task may become fixed as a permanent Pre-Priced item, which will no longer require price justification.

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

3. Total Fixed Cost of the Quote

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

4. Submittals

All documents, shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in Contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work Duration Schedule

With each quote, the Contractor agrees to furnish a Gantt chart Work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart Work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.

The purpose of the Work Duration Schedule is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed Scope of Work, with the critical path highlighted.

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- a. Schedule Approval; all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
 - b. Schedule Updates; the Contractor agrees to maintain the Work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
 - c. Adjustment of the Work duration schedule; the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or Job Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
 2. Increase the number of working hours per shift, shifts per working day.
 3. Reschedule the Work under the Job Order in conformance with all other requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
 4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County's Project Manager for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.
6. Subcontractor's List
- The Quote represents the Contractor's offer to do Work, and as such, in accordance with Sections 4100 to 4114, inclusive, of the Public Contract Code 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
- The Contractor agrees to transmit an electronic copy of the Quote, using the County furnished software, to the County.
8. Complete Quote
- By submitting a signed Quote, the Contractor is agreeing to accomplish the Work outlined in the RFQ and the Detailed Scope of Work for that particular Job Order. It is the

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Contractor's responsibility to include the necessary line items in the Quote prior to submitting it to the County. Errors and omissions in the Quotes shall be the responsibility of the Contractor. All costs associated with preparing Quotes shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual Job Orders.

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.

E. Project Approval

The 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.

The County reserves the right to reject a Contractor's Quote based on unjustifiable quantities and/or methods, performance periods, inadequate documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

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

The County also reserves the right to not issue a Job Order Authorization if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Quote expenses. The County may pursue continuing valid requirements by other means where Contract was not reached with the Contractor.

F. Quote Time Requirements

1. Quote Submittal

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

The Contractor agrees to make a thorough analysis of each Request for Quote and submit all requests for information to the County, in writing. All requests for information and the responses are to be documented in the Detailed Scope of Work. The requests shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) review and consideration. The requests for information shall not extend the Quote due date unless mutually agreed to by the County.

2. Quote Review

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

3. Quote Modification

The Contractor will be granted only one opportunity to add new, valid line items that may

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

4. Enforcement of Time Requirements

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

IV. APPROVAL AND CONSTRUCTION PROCEDURES:

A. Job Order Authorization (JOA)

Upon approval of the Scope of Work and the Contractor's Quote, the County will issue a Job Order Authorization to the Contractor. 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.
2. Prepare a detailed Work duration schedule.
3. The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).
4. Upon issuance of the NTP, the County agrees to have the right to direct the Contractor to withhold actual commencement of a Job Order in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the completion time of the Job Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Completion time. The only compensation would be if a Job Order is delayed in part, after Work has commenced, and the Contractor is required to perform additional Work to make the Work area safe or to perform additional scope as directed by the County. This additional Work will be considered additional Work and ordered as a separate Job Order.

B. Notice to Proceed (NTP)

Following the JOA and purchase order issuance, the County will issue a Notice to Proceed (NTP) that will provide the construction start date, the Work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

The County may also issue an Emergency Notice to Proceed (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

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required Non-Pre-priced backup documentation will be submitted upon completion of the emergency work in accordance with the Ordering Procedures detailed in Section III above.

C. Pre-Construction Meeting

No more than seven (7) days from the issuance of the NTP, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

D. Project Construction

The Contractor agrees to provide continuous on-site supervision on each 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 any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each day the Contractor does not provide the documentation.
6. County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County.

E. Changed Work

Changed Work (all added or deleted Work), as it pertains to the approved Detailed Scope of Work included in a specific Job Order, shall be either changes directed by the County or unforeseen site conditions, which were not evident during the Initial Joint Scope Meeting. This additional Work will be considered a subsequent Job Order, for that specific project, and will be ordered, approved and executed as per the procedures set forth in this Contract.

A credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Quote. Credits for Pre-Priced and Non-Pre-Priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. A Supplemental Job Order will be issued detailing the credit(s) due the County.

F. Project Completion

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

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

V. CONTRACTS AND ORDER OF PRECEDENCE:

In the event that any provision(s) in any component part of the Contract conflicts with any provision(s) of any other component part, the following order of precedence among the Contracts component parts shall govern:

- A. Job Orders (including Scope of Work)
- B. County - Contractor Contract
- C. Project manual
- D. Construction Task Catalog®
- E. County Standard Plans
- F. Technical Specifications
- G. Green Book

VI. PERMITS, BUSINESS LICENSES, INSPECTIONS AND WARRANTY:

- A. Except as noted, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Quote as a Non-Pre-Priced Task. Any permit and/or inspection fees not included in the Quote will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s).
- B. The Contractor will be required to obtain a city business license to perform the Work in the appropriate city, as specific in the Job Order.
- C. To comply with Section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.

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- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the Detailed Scope of Work. All other required inspections will be the responsibility of the Contractor.
- F. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective Work after one re-inspection, the County may charge the Contractor for additional re-inspection.
- G. In addition to any other warranties in this Contract, or those provided by manufactures the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- H. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- I. This warranty shall continue for a period of one year from the date listed on the Notice of Completion for the specific Job Order. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes occupancy. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- J. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- K. As required by the Detailed Scope of Work for a specific Job Order, the County may be required to enter into Contracts with other Local, State and Federal Agencies to accomplish the subject Scope of Work. Agencies may include but are not limited California Department of Fish and Game, US. Army Corps of Engineers, California Regional Water Quality Control Board. The Contractor will be required to comply with the requirements set forth within the permit.
- L. Best Management Practices (BMPs) may be required for specific Job Orders, which will be identified in the Detailed Scope of Work. All California Storm Water Quality Association (CASQA) Construction BMPs may be viewed at www.cabmphandbooks.com. It is the Contractors responsibility to pay for all costs incurred by the specific BMPs. The County will not reimburse these costs.
- M. As required by the Detailed Scope of Work, per a specific 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

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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

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

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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
 - 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

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- 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
- 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

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

VII. GENERAL REQUIREMENTS:

- A. Contractor must ensure all precautions for safety are taken. Contract comply will all Federal, State and Local requirements, codes, and laws.
- B. Contract shall secure Contractor vehicles parked on site at all times.
- C. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc.; to protect the public, OC Public Works Staff, and its workers during the performance of this Contract.
- D. All tools and materials shall remain in Contractor's possession at all times.
- E. Contract shall assure that all materials that could inflict injury shall be continuously cleaned up as Work progresses.
- F. Contractor shall secure all Work areas prior to the end of each workday.
- G. Contractor shall ensure all employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site.

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- H. The Contractor shall possess a current State of California Painting Services Contractor's license C-33 issued by the California State Contractor's License Board.
- I. Contract shall warranty all labor and materials used in the Work for a period of one (1) year after completion and acceptance of Work, for each specific Job Order
- J. Contractor shall meet all insurance and bond requirements to perform Work for OC Public Works.
- K. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
- L. Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area which are shown on the plans to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately-owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Contract Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets, ways or parking areas.
- M. Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Contract specifications require dust control. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment usage should be limited to Normal Working Hours, in accordance with the Contract specifications. Equipment must conform with all applicable noise regulations.
- N. Contractor shall comply with all County of Orange and local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract and shall make every effort to control any undue noise resulting from the construction operation. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. The noise level from the Contractor's operations between the hours of 8 p.m. and 7 a.m. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control." This requirement in no way relieves the Contractor of responsibility for complying with local ordinances regulating noise level. Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings, except those required by safety laws for the protection of personnel.
- O. Construction Area: Contractor shall protect property and facilities adjacent to the construction area and all property and facilities within the construction area which are shown on the plans are to be protected. After project completion, the construction area shall be in a clean and presentable condition. All public or privately-owned improvements and facilities shall be restored to their original condition and location. If improvements or facilities are damaged, they shall be replaced with new materials which are at least equal to the original materials. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, way, or parking area during performance of the Work. Contractor shall conduct its operations so as not to interfere with the authorized Work of utility companies or other agencies in such streets,

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ways or parking areas. The Contractor shall be responsible for investigating conditions of available public and private roads and of clearances, restrictions and other limitations affecting transportation and ingress and egress to the site of the Work. Use of equipment will be minimized during any Stage II or Stage III smog alerts. All equipment will meet emissions standards. Dust Control is required at all times. All proper public safety measures are to be used during construction, including barriers, flagmen and signing. Equipment must conform to all applicable noise regulations.

- P. Contractor shall, whenever possible, minimize the use of water during project construction. Watering equipment shall be kept in good working order. Water leaks shall be repaired promptly. Washing of equipment, except when necessary for the safety or for the protection of equipment, shall be discouraged. Water curing of concrete improvements as specified in Section 303-1.10, "Curing" of the Standard Specifications for Public Works Construction, shall not be allowed unless specifically permitted by these Special Provisions or directed by the Project Manager. Nothing in this section, "Water Conservation," shall be construed as relieving the Contractor of furnishing sufficient water as required for the proper construction of this project in accordance with the Standard Specifications for Public Works Construction and these Special Provisions.
- Q. Contractor shall anticipate that storm, surface and possible ground or other waters will be encountered at various times and locations during the Work. Such waters may interfere with Contractor's operations and may cause damage to adjacent or down-stream private and/or public property by flooding, lateral erosion, sedimentation, or pollution if not properly controlled by the Contractor. The Contractor, by submitting a bid, assumes all of said risk and the Contractor acknowledges that its bid was prepared accordingly.

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

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

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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 the Contractor, require the Contractor to stop all or any part of the Work, as per a specific Job Order, for a period of 90 days after the stop Work order is delivered to the Contractor and for any further period to which the Parties may agree. The stop Work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop Work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the stop Work order during the period of Work stoppage. Within a period of 90 days after a stop Work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:

- A. Cancel the stop Work order; or
- B. Cancel the Job Order immediately in whole or in part in writing as soon as feasible.

IX. COMPUTER AND SOFTWARE REQUIREMENTS:

A. Computer

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

B. Software

1. Job Order Contracting Software

The COUNTY selected The Gordian Group's (Consultant) Job Order Contracting ("JOC") Solution (Gordian JOC Solution) for their JOC program. The Gordian JOC Solution includes Consultant's proprietary eGordian® JOC application (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the CONTRACTOR to prepare and submit 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.

CONTRACTOR is required to use Gordian's JOC Solution to receive task orders from the COUNTY under this AGREEMENT. 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

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System License, and CONTRACTOR may not use Consultant Materials for any purpose other than to execute work under this AGREEMENT 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 AGREEMENT.

A copy of Consultant's most recent JOC System License is attached hereto as Exhibit "A" for CONTRACTOR's reference.

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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 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

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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 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 Painting Services, as set forth in Attachment “A” Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment.

II. FEES AND CHARGES: County will pay the following in accordance with the provisions of this Contract.

A. Adjustment Factors: The Contractor’s two Adjustment Factors that will be applied against the prices set forth in the Contract Task Catalog®. These Adjustment Factors will be used to price out fixed price Job Orders by multiplying the appropriate Adjustment Factor by the Unit Prices and appropriate quantities.

i. **FACTOR 1** - Unit Work requirements to be performed during Normal Working Hours (7:00AM to 5:00PM) as ordered by the County in individual Job Orders against this Contract.

0.9360

For Normal Working Hours

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

0.9560

For Other Than Normal Working Hours

B. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED.....\$1,000,000

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.

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IV. CONTRACTOR'S EXPENSE: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of Work and services under this Contract.

V. PAYMENTS TERMS:

- A. The County shall make payments upon the agreed upon price for a specific Job Order as listed in the Notice to Proceed. The County will make progress payments monthly as the Work proceeds on estimates approved by County Project Manager. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, to provide a basis for determining progress payments. The County will only pay for actual Work in place.
- B. **Lump sum payment** - if an individual Job Order is scheduled for Completion within 45 days or less, the County will make one payment after 30 days of Work to the Contractor, exclusive of retention. Contractor may request for one payment (including retention payment); however, payment will be made after Final Acceptance of the Job Order.
- C. **Partial payment** – the County will consider a request for partial payments for Job Orders scheduled for a performance period of greater than 45 days.
- D. **Retention** - When payments are made under this Contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion for each individual Job Order must be filed. Final payment is to be made 35 days subsequent to the filing of the Notice of Completion.
- E. **Retention Release** - The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Scope of Work and the terms and conditions of the Job Order and Contract for completed and warranty Work. The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this provision herein. The Contractor must submit a completed invoice to the County for approval. The Contractor agrees that the signature on the invoice certifies that it has completed or submitted the following:
1. All warranties and maintenance requirements; and
 2. All as-built prints and record drawings; and
 3. All operation and maintenance manuals; and
 4. All badges, keys and security entry cards; and
 5. Conducted all required training for County Personnel;
 6. All other items as applicable.

VI. INVOICING INSTRUCTIONS:

- A. Invoices are to be submitted in arrears, after services have been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to

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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.

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- 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.
- G. Upon receipt of a stop notice, the County will withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation., In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.
- H. The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:
1. Contractor's name and address
 2. Contractor's remittance address (if different from 1 above)
 3. Name of County department
 4. County Contract number
 5. Service date(s)
 6. Service description
 7. Contractor's Federal I. D. number
 8. Updated duration schedule
 9. An updated schedule of values
 10. Releases
 11. Total

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

OC Public Works/OC Facilities
Attn: County Project Manager
601 N. Ross Street 4th Floor
Santa Ana, CA 92701

- I. Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA