

1 COUNTY/CONTRACTOR AGREEMENT

2

3 PROJECT: Dana Wharf Restroom Renovation

4 PROJECT NO.: DP30382

5 LOCATION: 34683 Street of the Golden Lantern, Dana Point, CA 92629

6

7 THIS AGREEMENT, made and entered into on _____, is by and
8 between the County of Orange, a political subdivision of the State of
9 California, hereinafter referred to as "COUNTY," and
10 _____, hereinafter referred to as "CONTRACTOR."

11

12 That COUNTY and CONTRACTOR, for the consideration hereinafter named,
13 mutually agree as follows:

14 **1. CONTRACT DOCUMENTS:** The complete Contract includes all of the
15 Contract documents as follows:

- 16 • Notice Inviting Bids
- 17 • Instructions to Bidders
- 18 • Proposal
- 19 • Performance Bond
- 20 • Payment Bond
- 21 • Certificates of Insurance
- 22 • General Conditions
- 23 • Supplementary General Conditions
- 24 • Drawings
- 25 • Specifications
- 26

- 1 • This Agreement, and all Modifications and Amendments
2 thereto

3 The complete Contract documents comprise the sole agreement between
4 the parties as to the subject matter therein. Any representations or
5 agreements not specifically contained therein are null and void. Any
6 Amendments to any contract documents must be made in writing, signed
7 by both parties. The Contract Documents are complementary, and what is
8 called for by any one shall be as binding as if called for by all.

9 **2. SCOPE OF WORK:** CONTRACTOR shall perform everything required to
10 be performed, shall provide and furnish all the labor, supervision,
11 funding, administration, planning, scheduling, materials testing,
12 inspecting, tools, services, equipment and all utility and
13 transportation services in adequate quantity and quality to accomplish
14 completion of the work as specified and all work inferred as necessary
15 within the time period set forth. The work shall conform with the
16 Contract Documents and all codes, regulations, laws, etc. referenced
17 in the Contract Documents or by industry standard.

18 **3. COUNTY ACCEPTANCE:** All labor, materials, tools, equipment, and
19 services shall be furnished and work performed and completed under the
20 general direction and subject to the acceptance of COUNTY or its
21 authorized representatives.

22 **4. CONTRACT AMOUNT AND SCHEDULE:** COUNTY agrees to pay and
23 CONTRACTOR agrees to accept in full payment for the work above agreed
24 to be done, the sum of _____
25 **Dollars (\$_____)**, the total amount of the base bid, which
26

1 sum is to be paid according to the payments clause and subject to
2 additions, and deductions, if any, as hereinafter provided.

3 CONTRACTOR agrees to complete the work within 120 calendar days plus
4 70 calendar days commencing from the date of award of Contract by
5 COUNTY. The 70 days include 10 days for CONTRACTOR to submit his
6 bonds and insurance, and 60 days for COUNTY to approve. Construction
7 shall not commence until such bonds and insurance are approved in
8 writing by COUNTY. CONTRACTOR will receive a signed Agreement after
9 approval of the bonds and insurance.

10 CONTRACTOR agrees to the deduction of one calendar day from the
11 calendar days stipulated for completion of the work for every day of
12 delay in SUBMITTING OF ACCEPTABLE BONDS AND INSURANCE beyond the 10
13 days limitation set forth above.

14 **PAYMENTS:** During the fourth week of the calendar month following the
15 commencement of the work and each successive month thereafter,
16 CONTRACTOR shall prepare an accurate progress payment request on a
17 form prescribed by COUNTY's OC Dana Point Harbor. The progress
18 payment request shall be in conformance with Clause 13 Payments of the
19 General Conditions. Approximately thirty (30) days after COUNTY's OC
20 Dana Point Harbor written approval of the payment request, the
21 CONTRACTOR shall be paid such sum as will bring the payments each
22 month up to ninety-five (95) percent of the value of the work
23 completed less any money properly withheld in accordance with this
24 CONTRACT, since the commencement of the work, less all previous
25 payments, provided that the CONTRACTOR submits his request for payment
26 prior to the last day of each preceding month. The COUNTY'S

1 Representative will review the payment request as soon as practicable
2 to determine if it is proper. A payment request determined not to be
3 a proper payment request suitable for payment will be returned to the
4 CONTRACTOR within seven days with a statement setting forth the
5 reasons why the payment request is not proper. The final payment, if
6 unencumbered, or any part thereof unencumbered, shall be made no later
7 than 60 days after completion of the work including the CONTRACTOR's
8 submission and the COUNTY's acceptance of all required completion
9 documents. Payments shall be made on the progress payment request
10 signed by the COUNTY's OC Dana Point Harbor, stating that the work for
11 which the payment is demanded has been performed in accordance with
12 the terms of the Contract, and that the amount stated in the payment
13 request is due under the terms of the Contract. CONTRACTOR is
14 entitled to interest pursuant to Public Contract Code Section
15 20104.50, if COUNTY fails to make any progress payment within 30 days
16 after receipt of an undisputed and properly submitted payment request.
17 Failure to make the final payment in accordance with the requirements
18 of Public Contract Code Section 7107, shall entitle CONTRACTOR to
19 additional payments as specified in Public Contract Code Section
20 7107(f). Partial payments on the Contract price shall not be
21 considered as an acceptance of any part of the work.

22 **6. LIQUIDATED DAMAGES; EXTENSION OF TIME:** In accordance with
23 Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay
24 to COUNTY the sum of **FIVE HUNDRED TWENTY FIVE Dollars (\$525)** per day
25 for each calendar day work is delayed beyond the time allowed, and
26 such sum shall be deducted from any payments due to or to become due

1 to CONTRACTOR. CONTRACTOR will be granted an extension of time and
2 will not be assessed liquidated damages for unforeseeable delays
3 beyond the control of and without the fault or negligence of the
4 CONTRACTOR including delays caused by COUNTY.

5 **7. WAIVER OF CLAIMS:** Unless a shorter time is specified elsewhere
6 in this Contract, on or before making his final request for payment
7 under Paragraph 5 above, CONTRACTOR shall submit to COUNTY, in
8 writing, all claims for compensation under or arising out of this
9 Contract; the acceptance by CONTRACTOR of the final payment shall
10 constitute a waiver of all claims against COUNTY under or arising out
11 of this Contract except those previously made in writing and
12 identified by CONTRACTOR as unsettled at the time of his final request
13 for payment.

14 **8. WARRANTY WORK:** Failure by the CONTRACTOR to take corrective
15 action within twenty four (24) hours after personal or telephonic
16 notice by the COUNTY's OC Dana Point Harbor on items affecting
17 essential use of the facility, safety or the preservation of property,
18 and within ten (10) calendar days following written notice on other
19 deficiencies, will result in the COUNTY taking whatever corrective
20 action it deems necessary. All costs resulting from such action by
21 the COUNTY will be claimed against CONTRACTOR or, if necessary, the
22 CONTRACTOR's Performance Bond.

23 **9. WAGE RATES:** CONTRACTOR shall post a copy of the wage rates at
24 the job site and shall pay the adopted prevailing wage rates as a
25 minimum. Pursuant to the provisions of Section 1773 of the Labor Code
26 of the State of California, the Board of Supervisors has obtained the

1 general prevailing rate of per diem wages and the general prevailing
2 rate for holiday and overtime work in this locality for each craft,
3 classification, or type of workman needed to execute this Contract
4 from the Director of the Department of Industrial Relations. These
5 rates are on file with the Clerk of the Board of Supervisors. Copies
6 may be obtained at cost at the office of COUNTY's OC Dana Point Harbor
7 or visit the website of the Department of Industrial Relations,
8 Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The CONTRACTOR shall
9 comply with the provisions of Sections 1774, 1775, 1776 and 1813 of
10 the Labor Code.

11 **10. GOVERNING LAW AND VENUE:** This Agreement has been negotiated and
12 executed in the State of California and shall be governed by and
13 construed under the laws of the State of California. In the event of
14 any legal action to enforce or interpret this agreement, the sole and
15 exclusive venue shall be a court of competent jurisdiction located in
16 ORANGE COUNTY, California, and the parties hereto agree to and hereby
17 submit to the jurisdiction of such court, notwithstanding Code of
18 Civil Procedure Section 394.

19 The parties specifically agree that by soliciting and entering into
20 and performing services under this agreement, the CONTRACTOR shall be
21 deemed to constitute doing business within ORANGE COUNTY from the time
22 of solicitation of work, through the period when all work under this
23 agreement is completed, and continuing until the expiration of any
24 applicable limitations period. Furthermore, the parties have
25 specifically agreed, as part of the consideration given and received
26 for entering this agreement, to waive any and all rights to request

1 that an action be transferred for trial to another county under Code
2 of Civil Procedure Section 394.

3 **11. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS:** CONTRACTOR agrees to
4 complete and furnish to the COUNTY Exhibit "A" and Exhibit "B"
5 attached hereto and incorporated herein by reference, within thirty
6 days of the date of this contract:

7 CONTRACTOR acknowledges that the data contained in Exhibits "A" and
8 "B" will be transmitted by COUNTY to the Orange County Department of
9 Child Support Services and other governmental agencies charged with
10 the establishment and enforcement of child support orders, and for no
11 other purpose.

12 **12. APPRENTICESHIP REQUIREMENTS:** The CONTRACTOR shall comply with
13 Section 230.1(A), California Code of Regulations as required by the
14 Department of Industrial Relations, Division of Apprenticeship
15 Standards by submitting DAS Form shown as Exhibit "C" to the Joint
16 Apprenticeship Committee of the craft or trade in the area of the
17 site.

18 **13. STATE AUDIT AND ACCOUNTING RECORDS:** Pursuant to and in
19 accordance with Section 8546.7 of the California Government Code, if
20 this Agreement involves expenditures of public funds aggregating in
21 excess of Ten Thousand Dollars (\$10,000), the CONTRACTOR shall be
22 subject to the examination and audit of the Auditor General of the
23 State of California for a period of 3 years after final payment under
24 the Agreement.

25 CONTRACTOR shall maintain records for all costs connected with the
26 performance of the Contract including but not limited to the costs of

1 administering the contract, materials, labors, equipment, rentals,
2 permits, insurance, bonds, etc. for audit or inspection by County,
3 State, or by any other appropriate governmental agency during the
4 three year period.

5 **14. EMPLOYEE ELIGIBILITY VERIFICATION:** The CONTRACTOR warrants that
6 it fully complies with all Federal and State statutes and regulations
7 regarding the employment of aliens and others and that all its
8 employees performing work under this Contract meet the citizenship or
9 alien status requirement set forth in Federal statutes and regulations.
10 The CONTRACTOR shall obtain, from all employees performing work
11 hereunder, all verification and other documentation of employment
12 eligibility status required by Federal or State statutes and
13 regulations including, but not limited to, the Immigration Reform and
14 Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist
15 and as they may be hereafter amended. The CONTRACTOR shall retain all
16 such documentation for all covered employees for the period prescribed
17 by the law. The CONTRACTOR shall indemnify, defend with counsel
18 approved in writing by COUNTY, and hold harmless, the COUNTY, its
19 agents, officers, and employees from employer sanctions and any other
20 liability which may be assessed against the CONTRACTOR or the COUNTY
21 or both in connection with any alleged violation of any Federal or
22 State statutes or regulations pertaining to the eligibility for
23 employment of any persons performing work under this Contract.

24 //
25 //
26 //

Attachment A

Revised 9/30/2008
Agreement D09-042

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to
2 be executed on the date first above written

3

4

COUNTY OF ORANGE

5

6

Date: _____ By: _____

7

Chair of the Board of Supervisors

8

Orange County, CA

9

10

Signed and certified that a copy of this
11 document has been delivered to the Chair
12 of the Board per G.C. Sec. 25103,

13

Reso 79-1535

14

Attest:

15

16

17

18

Darlene J. Bloom

19

Clerk of the Board of Supervisors

20

Orange County, California

21

APPROVED AS TO FORM:

22

Office of the County Counsel

23

Orange County, California

24

By: _____

25

Deputy

26

Date: _____

Attachment A

Revised 9/30/2008
Agreement D09-042

1 CONTRACTOR

2

3 By: _____ By: _____

4

5 Print Name: _____ Print Name: _____

6

7 Title: _____ Title: _____

8

9 Date: _____ Date: _____

10

11

12 * Note: Pursuant to the requirements of California Corporations Code section
13 313, one of the following two methods must be used by a corporation
14 when it enters into a contract with the County:

15

16 1. If a corporation, the document must be signed by two corporate
17 officers. The 1st signature must be either Chairman of the Board,
18 President or any Vice President; The 2nd must be the Secretary,
19 Asst. Secretary, Chief Financial Officer, or any Assistant
20 Treasurer.

21

22 2. One corporate officer may sign the document, providing that
23 written evidence of the officer's authority to bind the
24 corporation with only his or her signature must be provided.
25 This evidence would ideally be a corporate resolution.

26