

CONTRACT MA-060-18011033
FOR
ORANGE COUNTY SHERIFF-CORONER

THIS Contract MA-060-18011033 for Orange County Sheriff-Coroner, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and Exbon Development Inc., with a place of business at 13831 Newhope St., Garden Grove, CA 92843; (hereinafter referred to as "Contractor"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, County desires to enter into a Contract for Orange County Sheriff-Coroner; and

WHEREAS, the County of Orange, Department of Public Works advertised a Request for Qualifications and accepted proposals for General Construction and Maintenance Services that resulted in four vendors being selected ("RCA Contractors"), one of which was Contractor; and

WHEREAS, the County of Orange, Department of Public Works issued each of these four vendors a Regional Cooperative Agreement based on the aforementioned Request for Proposals; Contractor's Regional Cooperative Agreement and attachments are labeled MA-080-18010676 (hereinafter referred to as "RCA"); and

WHEREAS, the terms and conditions of the RCA are incorporated by reference into this Contract as if stated herein and the Contractor's RCA is attached hereto as Attachment "A"; and

WHEREAS, Contractor agrees to perform work pursuant to the RCA and this Contract; and

WHEREAS, County agrees to pay Contractor the fees as set forth in the RCA.

NOW, THEREFORE, in addition to the above the Parties mutually agree as follows:

ARTICLES

1. **Scope of Contract:** This Contract, any attachments, and the RCA, are hereby incorporated by reference, and specify the contractual terms and conditions by which the Contractor will perform work for the County. The terms, conditions, and pricing identified in the RCA shall be extended to all work performed under this Contract and pursuant to any subordinate contract, work order, or task order issued from this Contract. Should the terms or conditions of the RCA conflict with any terms or conditions herein, the terms of this Contract prevail. Contractor shall complete all work to County's satisfaction.
2. **Usage:** This Contract shall be used for the following types of construction or maintenance services and the total value of work performed shall not to exceed \$500,000:
 - (a) General Construction projects not to exceed \$45,000 in aggregate per project. These projects are commonly referred to as *Public Works Projects* and carry the same definition set forth by Public Contract Code § 22002 and Labor Code § 1720 for payment of prevailing wage. A Public Works Project includes construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly

owned, leased, or operated facility paid for using public funds; and painting or repainting of any publicly owned, leased, or operated facility. No contracts may be awarded for Public Works Contracts under this Contract where the aggregate value of the project exceeds \$45,000.

- (i) Projects of \$15,000 or less: quotes shall be solicited from at least one of the four RCA Contractors. Bids may be taken informally but shall be written and signed by the contractor prior to contract issuance.
 - (ii) Projects over \$15,000 but \$45,000 or less: bids shall be solicited from the four RCA Contractors. All bids shall be written and submitted in a sealed envelope. Bids shall be opened informally, but a summary of the bids and a copy of all bids will be made available for review upon request.
- (b) Maintenance Services not to exceed \$25,000 in aggregate per project. Maintenance services carries the same definition set forth by Public Contract Code § 22002 and Labor Code § 1720 for payment of prevailing wage. Maintenance work includes routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose; minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
3. **Bonds:** Contractor shall possess sufficient bonding for any project performed pursuant to this Contract and shall meet all risk and liability insurance requirements.
4. **Term:** ~~This Contract shall commence upon receipt of all necessary signatures and shall expire one year after the Board executes or authorizes the execution of this Contract, whichever is earlier.~~ This contract shall commence upon execution of all necessary signatures, and continue in effect from 6/26/18 through and including 6/25/20, unless otherwise terminated by County. The period of 6/26/18 through and including 6/25/19 shall be known as Contract number MA-060-18011033. The period of 6/26/19 through and including 6/25/20 shall be known as Contract number MA-060-19011306.
5. **Compensation and Payment:** Contractor agrees to provide work pursuant to any subordinate contracts, work orders, or task orders, at the fixed rates specified in the RCA (“Work.”) Total compensation under this Contract shall not exceed \$500,000. All price decreases will automatically be extended to County. The fixed prices shall include all costs including any costs associated with obtaining necessary permits.

Public Works Projects from \$5,000 to \$75,000 shall be paid by progress payments or by payment upon completion of the work as established in the Contract. County may process payment(s) up to 95 percent of the actual value of the work completed. Not less than 5 percent shall be withheld until the work is complete (PCC 9203). Retention shall be released in accordance with PCC 7107. Final payment shall be issued based on the completion of the work as described in this Contract and at the time the County or its Project Manager accepts all the work.

6. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the Work and any other deliverables under this Contract, as applicable, have actually been performed, received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in accordance with this Contract and the RCA.

7. **General Requirements:** Work shall be performed during normal working hours and coordinated with the County's project manager. Contractor must ensure all precautions for safety are taken. All Contractor vehicles parked on site shall be secure at all times. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc. to protect the public, County Staff, and its workers during the performance of this Contract. All tools and materials shall remain in Contractor's possession at all times. All material that could inflict injury shall continuously be cleaned as work progresses. All work areas shall be secured prior to the end of each work day. Contractor employees are to smoke only in designated areas and are not to use profanity or other inappropriate language while on site. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
8. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- 8.1 Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
- 8.2 Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
- 8.3 The information contained in the payroll record is true and correct.
- 8.4 The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 8.5 The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
- 8.6 Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 8.7 Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general

prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

9. **Registration of Contractors:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.
10. **Prevailing Wage (Labor Code §1773 et seq.):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. Contractor and any Subcontractor(s) shall be subject to a penalty in an amount up to \$200, or a higher amount as provided by Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done by the Contractor or Subcontractor(s) under the Contract. Contractor and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
11. **Termination for Convenience of Owner:** Notwithstanding any other provision of the Contract or any other remedies it may have, County may at any time and without cause terminate the Contract, in whole or in part, without penalty, upon not less than 30 days written notice to the Contractor. Such termination shall be effected by delivery of a Notice of Termination to Contractor specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part, and, if applicable, the portion of work to be terminated. Contractor shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by County. County shall pay Contractor for the work completed and accepted by County prior to the effective date of the termination, and such payment shall be Contractor's sole remedy. Under no circumstances will Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. Contractor shall insert in all subcontracts that the Subcontractors shall stop work on the date of and, if applicable, the portion of work to be terminated in a Notice of Termination and shall require Subcontractors to insert the same condition in any lower tier subcontracts.
12. **Termination for Casue:** If Contractor to carry out the requirements of the Contract, including but not limited to: failing to commence work within a time specified; failing to prosecute the work with such diligence as will ensure its completion within the Contract time; failing to complete the work within the Contract time; failing to execute the work in the manner specified in Contract documents, subordinate contracts, work orders, or task orders; persistently, willfully, or knowingly failing to

comply with applicable laws and regulations; becoming insolvent; assigning or subcontracting any part of the work without County's consent; not complying in good faith with the Contract; any misrepresentation or fraud on the part of Contractor; or any breach of the Contract; then County may, by written notice to Contractor, terminate for cause Contractor's right to proceed with the work or such part of the work as to which there has been delay, breach, or other default. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. 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.

Upon receipt of written notice from County of a termination for cause, Contractor shall cease operations as directed by County in the notice and take all actions necessary, or as County directs, for the protection and preservation of the work. After issuing a notice of termination for cause, County may take over the work and prosecute the same to completion by whatever means County deems reasonable, by contract or otherwise, and may take possession of and utilize in completing the work such materials, equipment, supplies, Contract documents, and other information in whatever form as may be on the site for the work and necessary therefor.

If County terminates for cause Contractor's right to proceed with the work, or Contractor otherwise fails to prosecute the work to completion, then the resulting damage will include but not be limited to Liquidated Damages, pursuant to the RCA, or such reasonable period of time as may be required for completion of the work together with any costs incurred by County to complete the work in excess of the unpaid Contract Price. Contractor shall not be entitled to receive any further payment under the Contract until the work is complete. If County's cost of completing the work, Liquidated Damages, and other damages exceed the unpaid balance of the Contract Price, then Contractor and Contractor's sureties shall pay the difference to County within thirty days of County's demand therefor.

Whether or not County issues a written notice of termination for cause, Contractor and its sureties shall be liable for any damage to County resulting from Contractor's refusal or failure to complete the work within the specified time or from Contractor's other breach or default with respect to the performance of the work. Contractor's right to proceed shall not be terminated for cause nor will Contractor be charged with resulting damage if the delay in the completion of the work arises from causes beyond the control and without the fault or negligence of Contractor, including but not limited to those circumstances of Weather Delays or Force Majeure, acts of County, or acts of another contractor in the performance of a contract with County. The rights and remedies of County provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

13. Disputes and Claims

California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. 9204 requires that the code section be placed in the public works project contract or summarized. It is copied in whole below. For all Public works claims, County and Contractor shall follow the steps set forth below.

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on public works in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to all claims by contractors in connection with public works.

(c) For purposes of this section:

(1) “Claim” means a separate demand by the contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a public works contract.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for public works.

(3)

(A) “Public entity” means, without limitation, a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Division of Boating and Waterways in the Department of Parks and Recreation as to any project under the jurisdiction of that division pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code.

(iii) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(iv) The Military Department as to any project under the jurisdiction of that department.

(v) The Department of General Services as to all other projects.

(vi) The High-Speed Rail Authority.

(4) “Public work” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

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

(d)

(1)

(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 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, such as neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

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

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

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

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

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

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

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity in its public works contracts may include dispute resolution provisions that comply with this section, including the timeframes set forth herein, and that prescribe additional reasonable and equitable terms regarding actions or procedures to be taken by the parties.

(g) This section applies to contracts entered into on or after January 1, 2016.

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

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

14. **Retainage and Department of Industrial Relations (“DIR”) Registration**

Public Works projects in the amount of \$5,000 or greater must have retainage of 5% withheld. DIR registration is required for Public Works projects, for general construction, and maintenance services as follows:

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

The small project exemption applies for all public works projects that do not exceed above referenced amounts effective July, 1, 2017 per DIR Newsline No. 2017-52.

15. Security Requirements: The County operates several secured facilities, most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to adhere to strict operation policies. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved. Contractor agrees to adhere to any and all policies and security requirements required by County and the Sheriff’s Department, including security clearances and Contractor agrees to maintain a cleared status for the duration of the Contract. County is not under any obligation to provide a reason why security or other clearances are denied.

16. **Bonds, Indemnity, Insurance and Responsibility**

16.1 **Payment and Performance Bonds.** Except for contracts with an overall value of \$25,000 or less, the Contractor shall furnish, at time of signing the Contract, a surety bond to protect the laborers and material men in accordance with Section 9554 of the Civil Code and a performance bond guaranteeing the faithful performance of this Contract, each in the amount of \$500,000, which is the value of this Contract. Contractor shall not be entitled to, nor shall County authorize, subordinate contracts when the total outstanding value of subordinate contracts 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 on forms provided in accordance with the RCA and issued and executed by an admitted surety insurer (authorized to transact surety insurance in

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California). (e.g.; if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure Best's Rating) and VII (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 conditions from time to time as requested by County, the Contractor shall promptly furnish such additional security as may be required by County 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 in a bond for the difference.

The payment and performance bonds must each be issued by a surety that: (i) is authorized by the California Insurance Commissioner to transact surety insurance in the State of California; (ii) has assets exceeding its liabilities in an amount equal to or in excess of the amount of the bonds; and (iii) acts in compliance with Insurance Code Section 12090.

The payment and performance bonds shall be in the form provided with the RCA and are subject to approval by the County.

- 16.2 County's Right to Replace Surety. If any surety upon any bond furnished in connection with this Contract becomes objectionable to County and fails to submit to County the documents described in California Code of Civil Procedure Sections 995.660(a) (1) through (a) (4) within the time specified in those Sections, then Contractor shall promptly furnish such additional security as may be required by County to protect the interests of County and of persons entitled to make a claim against the payment bond. Failure to furnish such additional security shall constitute a material breach of the agreement.
- 16.3 Indemnification. To the maximum extent allowable by law, Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which the County of Orange's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any loss, injury, liability claims, demands, costs and expenses whether incurred by or made against County or County Indemnitees of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products, work or other performance provided by Contractor pursuant to this Contractor. This indemnity applies even in the event of County or County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require Contractor to indemnify County or County Indemnitees for losses caused by County's or County Indemnitees' active negligence, sole negligence, willful misconduct, or defects in design furnished by them. If judgment is entered against Contractor or County or County indemnitees 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.

16.4 Insurance Provisions:

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

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

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

- 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.

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

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). 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	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

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 at least as broad.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 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 form CG2010 (ed. 11/85).

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

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

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

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

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

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

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or

decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

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

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

Construction Services:

The COUNTY shall secure and maintain Builder's Risk insurance upon the entire Work for new or major construction when applicable amounting to 100 percent (100%) of the insurable value of that Work. The Builder's Risk policy shall be written as an All Risk policy, with the exclusion of earthquake and flood risks. The CONTRACTOR and sub-contractors shall be included as additional insureds for the Builder's Risk exposures under the COUNTY's policy.

The Builder's Risk policy shall not be required to cover any tools, equipment, or supplies, unless such tools, equipment, or supplies are part of the Work being constructed. The CONTRACTOR shall be responsible for securing and maintaining appropriate insurance on any tools, equipment, or supplies that are not part of the Work being constructed.

The CONTRACTOR is responsible for the entire deductible amount of any and all Builder's Risk claims against the COUNTY's Builder's Risk policy. The deductible applies per claim, and the deductible shall not exceed \$10,000.00 per claim. Any loss claim under this insurance is to be coordinated with COUNTY.

The COUNTY and the CONTRACTOR waive all rights against each other and the subcontractors, sub-contractors, officers, and employees of each other, and the CONTRACTOR waives all rights against COUNTY's separate contractors, if any, and their subcontractors, sub-contractors, officers, and employees for damages caused by fire or other perils to the extent paid by the Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. The CONTRACTOR shall require of its subcontractors and sub-contractors by appropriate agreements, similar waivers, each in favor of all other parties enumerated in the previous sentence.

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.

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
Contractors Pollution Liability Including NODS (Applicable when hazardous materials are involved)	\$1,000,000 per claims-made or per Occurrence \$1,000,000 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 form CG2010 (ed. 11/85).

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

- 1) An Additional Insured endorsement naming the **County of Orange, 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.

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 interests clause (standard in the ISO CG 001 policy).

If Contractor's Pollution Liability is a claims-made policy, Contractor shall agree to maintain coverage for two (2) years following completion of contract.

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.

- 16.5 Responsibility for Damages or Injury. County and its officers and employees shall not be liable in any manner for any loss or damage to any portion of the work, any loss or damage to any of the materials or equipment used in the work, or any injury to any person or property by any cause that might reasonably have been prevented by Contractor, its employees, or its

*County of Orange, Sheriff-Coroner
Exbon Development, Inc.*

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Subcontractors. Contractor shall indemnify and defend County against any claims or liability under this section pursuant to the Indemnification provisions herein.

Contractor shall remove and dispose of any waste materials, including soils or other materials that become contaminated directly or indirectly as a result of Contractor performance under this Contract.

Payment of any penalties, fines, or other liability assessed to County by regulatory agencies due to Contractor's or any Subcontractor's action or inaction in performing the work shall be Contractor's sole responsibility. Contractor shall pay any assessments or damages covered by this Section directly, or, at County's discretion, County may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to Contractor.

- 17. Invoicing:** Invoices are to be submitted in arrears, after Work has been provided, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover Work, materials and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for materials or Work not provided or when materials or Work do not meet the contract requirements. Payments made by the County shall not preclude the right of the County from thereafter disputing any materials, goods, items or Work involved or billed under this contract and shall not be construed as acceptance of any part of the materials or Work.

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:

- A. Contractor's name and address
- B. Contractor's remittance address (if different from A above)
- C. Name of County agency department
- D. County Contract number
- E. Date(s) Work was performed
- F. Work (as specified above)
- G. Contractor's Federal I. D. number
- H. Total

- 18. Notices and Invoices:** Any and all notices, invoices, 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 Parties' Project Managers' routine exchange of information and cooperation during performance of this Contract. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Orange County Sheriff-Coroner
Attn: Elizabeth Ochoa, Contract Supervisor
431 The City Drive South

County of Orange, Sheriff-Coroner
Exbon Development, Inc.

MA-060-18011033

Orange, CA 92868
Phone: 714-935-6841
Email: elochoa@ocsd.org

Procurement: Orange County Sheriff-Coroner
Attn: Yvette Torres, Supervising PCS
320 N. Flower Street
Santa Ana, CA 92703
Phone: 714-568-5791
Email: ytorres@ocsd.org

Contractor: Exbon Development, Inc.
Attn: Don Seo
13831 Newhope St.
Garden Grove, CA 92843-3714
Phone: (714) 539-2222
Email: don.seo@exbon.com

*County of Orange, Sheriff-Coroner
Exbon Development, Inc.*

MA-060-18011033

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date shown below their respective signatures.

Exbon Development, Inc.
a state of California corporation

By _____

By _____

Print
Name _____

Print
Name _____

Title _____
Corporate Title

Title _____
Corporate Title

Date _____

Date _____

COUNTY OF ORANGE
A political subdivision of the State of California

By _____

Print
Name _____

Title _____

Date _____

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

APPROVED AS TO FORM
COUNTY COUNSEL

Deputy

*County of Orange, Sheriff-Coroner
Exbon Development, Inc.*

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ATTACHMENT A
REGIONAL COOPERATIVE AGREEMENT (RCA MA-080-18010676)