

**DESIGN-BUILD CONSTRUCTION CONTRACT  
EAST GARDEN GROVE-WINTERSBURG CHANNEL**

**CONTRACT NO. MA-080-20011583**

This Contract is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the County of Orange, a political subdivision of the State of California, and the Orange County Flood Control District, a body corporate and politic, herein referred to as, "Owner," and J.F. Shea Construction, Inc., herein referred to as "Design-Build Entity" or "D-BE," with Owner and D-BE sometimes individually referred to as "Party" or collectively referred to as "Parties."

Owner and D-BE agree as follows:

**1. CONTRACT DOCUMENTS**

Contract Documents, which together comprise the complete Contract between Owner and D-BE, consist of the following: Owner approved Guaranteed Maximum Price (GMP), as approved by the Director of OC Public Works or designee ("Director"); this Contract; the Design Phase Contract (MA-080-20010322); the General Conditions; Supplemental General Conditions; Addenda; Attachments; Plans; Standard Specifications; all Reference Specifications mentioned in any Contract Documents; and all modifications and amendments to the foregoing issued after the date of execution of the Contract, including Amendments and Change Orders. The Contract Documents also include a Faithful Performance Bond and the Labor and Material Payment Bond corresponding with the GMP. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event of a discrepancy between the Design Phase Services Contract, and this Construction Contract, this Construction Contract shall govern.

**2. SCOPE OF WORK**

D-BE shall perform all work as required by, and in strict accordance with the Contract Documents (the "Project"), which consists, in general of the design and construction of *East Garden Grove-Wintersburg Channel*.

Other items of work or details not mentioned above that are required by the Plans, Standard Specification, or Special Provisions, shall be performed, placed, and constructed.

**3. CONTRACT PRICE, CONTINGENCY AND CONTRACT TIME**

**3.1 GUARANTEED MAXIMUM PRICE**

Owner shall pay D-BE for all work required by the Contract Documents at or below the total Guaranteed Maximum Price (GMP) Construction Services Contract of Seventy-Eight million, Six hundred and Eighty-Nine thousand and Ninety-Six Dollars (\$78,689,096). The GMP for the entire Work may be adjusted pursuant to the "Changes" Section of the General Conditions, and in accordance with the "Payments" Section of the General Conditions.

**3.2 CONTINGENCY**

3.2.1 "Contingency (D-BE's)" means a fund to cover cost growth during the Project used at the discretion of the D-BE usually for costs that result from Project circumstances. The amount of the D-BE's Contingency will be One million, Four hundred and Seventy Thousand Dollars (\$1,470,000). Use

and management of the D-BE's Contingency during the construction phase is as presented in the Design Phase Contract, as reproduced in part below for reference.

D-BE's Contingency is an amount the D-BE shall use under the following conditions:

- (1) With written approval of the Owner for increases in the Cost of the Work which are not the Owner's responsibility, or
- (2) With written approval of the Owner for increases in General Condition Costs.
- (3) Any D-BE Contingency not utilized shall be shared 50/50 between the Owner and D-BE after Project completion.

Markups (as established in the Design Phase Contract) will be applied by the D-BE at the time that the D-BE submits a request for use of the D-BE's Contingency to the Owner for approval. The Owner will not unreasonably withhold approval of use of D-BE contingency under condition (1) above.

3.2.2 "Contingency (Owner's)" means a fund to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the D-BE, the sum of which will be the full contract price for construction. Markups for Construction Fee (as established in the Design Phase Contract) and taxes will be applied by the D-BE at the time that Owner's Contingency is used. Any Owner Contingency not utilized shall revert to the Owner after Project completion.

The amount of the Owner's Contingency will be Four million, Nine hundred and Fifty Thousand Dollars (\$4,950,000). The Owner, at their sole discretion, can reduce the Owner's Contingency amount at any time.

### **3.3 CONTRACT TIME**

Within ten (10) calendar days of the Owner's execution of the Contract, D-BE shall submit to Owner for its review: acceptable bonds (as detailed below); proof of insurance; and updated Project Schedule including construction work as required by the Contract Documents. If Owner rejects the submitted documents, D-BE will have five (5) additional calendar days to resubmit. If D-BE fails to submit documents within the required time(s), the Contract Time (as defined below) will be reduced by the number of days which exceed the time for submittal. If D-BE fails to submit acceptable documents by the second submission, Owner may, at its sole discretion, reduce the Contract Time by the number of days between Owner's rejection of the second submission and Owner's approval of the documents.

Upon Owner's approval of the bonds, insurance, and updated Project Schedule, Owner will deliver to D-BE a signed copy of the Contract and a Notice to Proceed with the work. D-BE shall not commence construction until Owner issues the Notice to Proceed for the work package(s). D-BE shall complete all work required by the Contract Documents within Seven hundred and Thirty (730) calendar days of the effective date of the Notice to Proceed ("Contract Time"). The Contract Time includes Eighty (80) days of anticipated weather days necessitating stoppage of work, and a time extension due to rain or other adverse weather conditions will only be granted in accordance with the General Conditions.

The Owner will not be responsible for the failure of the D-BE to plan, schedule, and execute the work in accordance with the approved schedule or the failure of the D-BE to meet the Contract completion dates or the failure of the D-BE to schedule and coordinate the work of his own trades and subcontractors or to coordinate with others separate Contractors.

**3.4 CONTRACT PRICE**

The Total Contract Price shall be the summation of the Guaranteed Maximum Price and the Contingencies in the not to exceed amount of Eighty-Five Million, One Hundred and Nine Thousand and Ninety-Six Dollars (\$85,109,096).

**4. LIQUIDATED DAMAGES**

In accordance with Government Code Section 53069.85, D-BE agrees to forfeit and pay to Owner the sum of **\$5,500** per day (“Liquidated Damages”) for each calendar day that completion of all the work required by the Contract Documents is delayed beyond the Contract Time, or specified portion of work if designated in a GMP, as may be adjusted by Change Order. Owner may deduct such sum from any payments due to or to become due to D-BE. If the Liquidated Damages exceed the unpaid balance of the Contract Price otherwise owed to D-BE, then D-BE shall immediately pay Owner the difference.

**5. D-BE SHALL PERFORM 45% OR MORE OF THE WORK**

D-BE shall be capable of performing, and shall perform with its own organization, work amounting to at least 45% of the GMP amount. However, any GMP Item designated as a Specialty GMP Item will be excluded from the GMP amount for purposes of this Section only.

**6. OMITTED**

**7. EMPLOYEE ELIGIBILITY VERIFICATION**

D-BE hereby certifies that it complies with all applicable laws and regulations regarding the eligibility of its employees to work in the United States, and that all of its employees performing work under this Contract meet all citizenship or immigration status requirements to do so. D-BE shall obtain all documentation necessary to verify the employment eligibility status of covered employees as described by U.S. Citizenship and Immigration Services Form I-9. D-BE shall retain such documentation for the period prescribed by law. D-BE shall indemnify, defend with counsel approved in writing by Owner, and hold harmless the Owner, its agents, officers, and employees from any sanctions or liability that may be assessed in connection with any alleged violation of federal or State laws or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**8. SECURING WORKERS’ COMPENSATION INSURANCE CERTIFICATION**

D-BE, by executing this Contract, hereby certifies:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

**9. PARTIES’ REPRESENTATIVES**

## **9.1 OWNER'S REPRESENTATIVES**

- 9.1.1 Director designates the Owner's Senior Project Manager as the person who will act ex-officio as Owner's representative during construction of the Project. Unless otherwise expressly stated in the Contract Documents, Owner's designated representative will issue and receive all written communications on behalf of Owner for the Project. The Senior Project Manager shall manage the routine responsibilities of Owner, but is not authorized to make decisions for Owner that materially affect this Contract or create additional legal liabilities for Owner.

Owner has the final decision in all matters affecting the work. Owner has the authority to enforce D-BE's compliance with the Contract Documents. Owner's decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by D-BE and all work performed by D-BE shall be subject to the approval of Owner.

- 9.1.2 The Owner shall not be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the D-BE's failure to carry out the work in accordance with the Contract Documents.
- 9.1.3 The Owner will not be responsible for the acts or omissions of the D-BE, or any subcontractor, or any D-BE's or subcontractor's agents or employees, or any other persons performing any of the work.

## **9.2 OWNER'S AUTHORITY**

Owner has the final authority in all matters affecting the work. Owner has the authority to enforce D-BE's compliance with the Contract Documents. Owner's decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by D-BE and all work performed by D-BE shall be subject to Owner's approval.

## **9.3 D-BE'S REPRESENTATIVES**

- 9.3.1 Representative and Alternate: Before starting work, D-BE shall designate in writing a representative who shall have complete authority to act for it. The representative shall be the same as proposed during original Request for Proposal selection process unless otherwise approved in writing by the Owner. D-BE may also designate an alternate representative (also as identified during original Request for Proposal selection process) with complete authority to act for it. Owner may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless D-BE identifies to Owner in writing the officer(s) or employee(s) with such authority. Any order or communication given to this representative shall be deemed delivered to D-BE. In the absence of D-BE's representative, instructions or directions may be given by Owner to the Project Manager or superintendent. Such order shall be complied with promptly and referred to D-BE or its representative. D-BE's representative and alternate must be able to read, write, and speak English fluently.
- 9.3.2 D-BE's Project Manager: D-BE shall provide the services of the Project Manager, as proposed during original Request for Proposal selection process. D-BE's Project Manager, if different than designated representative, shall represent D-BE in the absence of D-BE's designated representative or alternate, and all directions given to the Project Manager shall be binding as if given to D-BE.

Owner may require D-BE to replace the Project Manager whose conduct or performance is unsatisfactory. D-BE shall not change its Project Manager without Owner's consent unless the Project Manager is unsatisfactory to D-BE or ceases to be in D-BE's employ. If D-BE's Project Manager leaves the Project, D-BE shall replace him or her within 24 hours (unless additional time is agreed upon by Owner) with a new, well-qualified Project Manager acceptable to Owner.

- 9.3.3 Project Engineer: D-BE shall provide the services of the Project Engineer, as proposed during the original Request for Proposal selection process. The D-BE's Project Engineer shall be responsible for all Architect-Engineer (A-E) services, as required by law, and is registered by the State of California for the practice of specialized A-E services per the Contract Documents.
- 9.3.4 Superintendent(s): D-BE shall provide the services of the superintendent(s) as proposed during original Request for Proposal selection process. A superintendent shall be present at the work site whenever work is in progress including whenever weather conditions necessitate its presence to take measures necessary to protect the work, persons, or property. D-BE's superintendent shall represent D-BE in the absence of D-BE's designated representative, alternate or Project Manager, and all directions given to the superintendent(s) shall be binding as if given to D-BE. The superintendent must read, write, and speak English fluently. Owner may require D-BE to replace a superintendent whose conduct or performance is unsatisfactory. D-BE shall not change its superintendent without Owner's consent unless the superintendent is unsatisfactory to D-BE or ceases to be in D-BE's employ. If D-BE's superintendent leaves the Project, D-BE shall replace him or her within 24 hours (unless additional time is agreed upon by Owner) with a new, well-qualified superintendent acceptable to Owner.
- 9.3.5 Alternate Supervision Plan: For Projects on which the original Contract Price is \$50,000 or less, D-BE may propose for Owner's consideration a plan for providing supervision on the site that does not involve the presence of a full-time superintendent, representative, or alternate, as required by the preceding paragraphs. Any such plan must ensure that D-BE's supervision of the work is adequate and effective for purposes of completing the work timely and in compliance with the Contract Documents. Owner may approve or reject D-BE's proposed plan in its sole and absolute discretion.
- 9.3.6 Emergency Contacts: D-BE shall provide Owner with a list of names and telephone numbers at which D-BE's representative, alternate, superintendent, and other key personnel can be reached during non-working hours in the case of an emergency.

## **10. SIGNATURE REQUIREMENTS**

The Contract must be signed by officer(s) authorized to bind D-BE. If documentation demonstrating express Owner is not provided, then the Contract must be signed by those officers with apparent Owner to bind D-BE. If D-BE is a corporation, such signatures must comply with Corporations Code Section 313, as follows:

One signature by the chairman of the board, the president, or any vice president; and one signature by the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

## **11. ENTIRE CONTRACT**

The Contract Documents represent the entire and integrated Contract between Owner and D-BE and supersede all prior representations, statements, or Contracts concerning the subject matter of this Contract, whether verbal or written.

**12. GOVERNING LAW AND VENUE – CODE OF CIVIL PROCEDURE SECTION 394**

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 hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

The parties specifically agree that by soliciting and entering into and performing services under this Contract, the D-BE shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this Contract is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering this Contract, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

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

J.F. SHEA CONSTRUCTION, INC.,  
a California Corporation

Date: 4/16/2020

By STEVE COX

STEVE COX, President  
Print Name & Title

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

Date: 4/16/2020

By Roy Valadez

ROY VALADEZ, 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 \_\_\_\_\_  
County of Orange, California

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

Date: \_\_\_\_\_

By \_\_\_\_\_  
County of Orange, California

**APPROVED AS TO FORM**  
Office of the County Counsel  
Orange County, California

By: Mark Sanchez 4/16/2020  
Deputy

Print  
Name MARK N. SANCHEZ, Deputy County Counsel

## COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT

(Within 30 Days of Award of Contract)

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In order to comply with the child support enforcement requirements of the County of Orange, within 30 days of award of contract, the contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

- A. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
- C. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the contractor to timely submit the data and/or certifications required or to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

FORM 73A—12/30/2001





**County of Orange**

**LABOR AND MATERIAL PAYMENT BOND**

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS COUNTY OF ORANGE has awarded to

\_\_\_\_\_  
(Contractor's Name and Address)

Hereinafter called "Contractor," a contract for the work described as follows:

**MA-080-20011583**

**Construction Contract for East Garden Grove-Wintersburg Channel**

Hereinafter called "Contract"; and

WHEREAS, said Contractor is required by the provisions of Sections 9550 et. seq. of the Civil Code to furnish a bond in connection with said Contract, as hereinafter set forth.

NOW, THEREFORE, WE, the undersigned Contractor, as Principal, and

\_\_\_\_\_  
(Name and Address of Surety (ies))

duly authorized to transact business under the laws of the State of California, as Surety (ies), hereinafter called "Surety (ies)," are held and firmly bound jointly and severally liable unto COUNTY OF ORANGE in the penal sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), lawful money of the United States, said sum being not less than the estimated amount payable by the said COUNTY OF ORANGE under the terms of the Contract, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

BOND NO. \_\_\_\_\_

THE CONDITION OF THIS OBLIGATION is such that, if said Contractor, his or its heirs, executors, administrators, successors, and assigns, or subcontractors, shall fail to pay for any materials, provisions, provender or other supplies, or teams, implements or machinery, used in, upon, for or about the performance of the work under the Contract to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, as required by the provisions of Chapter 5 of Title 3 of Part 6 of Division 4 of the Civil Code, and provided that the claimant shall have complied with the provisions of said Civil Code, the Surety (ies) shall pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety (ies) will pay in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by COUNTY in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered. This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond, and shall also cover payment for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor or his or its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code. And the said Surety (ies), for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or to the specifications accompanying the same, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

APPROVED AS TO SURETY AND LIMITS

CONTRACTOR

By \_\_\_\_\_  
CEO/Risk Management

By \_\_\_\_\_  
Name & Title (see footnote)

APPROVED AS TO FORM  
Office of the County Counsel  
Orange County, California

By \_\_\_\_\_  
Name & Title (see footnote)

By \_\_\_\_\_  
Deputy

SURETY (ies)

By \_\_\_\_\_

Dated \_\_\_\_\_

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

- 1) **Two people must sign** the document. One of them must be the chairman of the board, the president or any vice president. The other must be the secretary, any assistant secretary, the chief financial officer or any assistant treasurer.
- 2) One corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.

**Signature of Surety (ies) representative must be notarized. Attach certificate of notarization to this document.**  
**Name of Surety (ies) Company must be typed or stamped above signature line of surety (ies) representative.**



**County of Orange**

**FAITHFUL PERFORMANCE BOND**

BOND NO. \_\_\_\_\_

(The premium charged on this bond is \$ \_\_\_\_\_, being at the rate of \$ \_\_\_\_\_ per thousand of the Contract price.)

THAT, WHEREAS, the COUNTY OF ORANGE, State of California, entered into a contract dated \_\_\_\_\_, hereinafter called "Contract," with

\_\_\_\_\_  
(Name and Address of Contractor)

hereinafter called "Principal," for the work described as follows:

\_\_\_\_\_ **MA-080-20011583** \_\_\_\_\_  
**Construction Contract for East Garden Grove-Wintersburg Channel** ; and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

NOW, THEREFORE, WE, the Principal, and

\_\_\_\_\_  
(Name and Address of Surety)

duly authorized to transact business under the laws of the State of California, as Surety, hereinafter called "Surety," are held and firmly bound jointly and severally liable unto COUNTY OF ORANGE in the penal sum of \_\_\_\_\_ **Dollars (\$ \_\_\_\_\_)**, lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

BOND NO. \_\_\_\_\_

THE CONDITION OF THIS OBLIGATION is such that, if the Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to, and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, and in any alteration thereof made as therein provided, on his or its part to be kept and performed, at the time and in the manner therein specified, in all respects according to their true intent and meaning, and shall indemnify, defend with counsel approved in writing by COUNTY, and save harmless the COUNTY OF ORANGE, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue. As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included cost and reasonable expenses and fees incurred by COUNTY in successfully enforcing such obligation, all to be taxed as cost and included in any judgment rendered. And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or to the specifications accompanying the same, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_.

APPROVED AS TO SURETY AND LIMITS

CONTRACTOR

By \_\_\_\_\_  
CEO/Risk Management

\_\_\_\_\_  
Name & Title (see footnote)

\_\_\_\_\_  
Name & Title (see footnote)

APPROVED AS TO FORM  
Office of the County Counsel  
Orange County, California

SURETY

By \_\_\_\_\_  
Deputy

\_\_\_\_\_

Dated \_\_\_\_\_

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

- 1) **Two people must sign** the document. One of them must be the chairman of the board, the president or any vice president. The other must be the secretary, any assistant secretary, the chief financial officer or any assistant treasurer.
- 2) One corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.

**Signature of Surety representative must be notarized. Attach certificate of notarization to this document. Name of Surety Company must be typed or stamped above signature line of surety representative.**

## GENERAL CONDITIONS

## GENERAL CONDITIONS

### 1. DEFINITIONS

As used in the Contract Documents, the following terms shall have the following definitions:

Term	Definition
"day"	Unless otherwise specified within the Contract Documents, all references to any "day" or number of "days" shall mean consecutive calendar days (including all holidays and weekends).
"working day"	Monday through Friday, except: Saturday; Sunday; or any day designated as a holiday by OWNER.
Addendum/Addenda	Written or graphic instrument issued prior to the submittal of the GMP (hereinafter defined) Proposal(s), which corrects or changes the Contract Documents.
Agreement	The portion of the Contract Documents, signed by both Parties, that contains the Project name, Contract Price, Contract Time, Liquidated Damages, and other terms and conditions.
Amendment	A written instrument issued after execution of the Contract Documents signed by the Owner and D-BE, stating their Contract upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other Contract terms.
Application for Payment	D-BE's periodic or one-time claim for payment based on work completed.
Accepted Project Schedule	D-BE's Project progress schedule after it has been accepted by OWNER and designated as the Accepted Project Schedule and updated by each accepted monthly Schedule Update. The D-BE's Project Schedule was initiated upon execution of the Design Services Contract.
Board of Supervisors	OWNER's governing body.
CCR	California Code of Regulations.
Change Order	A modification of the Contract as provided by the "CHANGES" Section of the General Conditions.
Change Order Request	OWNER's request for D-BE to provide a proposal and price/time quote for OWNER's desired Change Order, or OWNER's description of work to be performed pursuant to D-BE's Request for Change.
Changed Conditions	Site conditions or materials of an unexpected nature or differing from those represented in the Contract Documents as provided by the "CHANGES" Section of the General Conditions.
Code Sections	Except where otherwise specified, all statutory references (e.g. "Labor Code" or "Public Contract Code") shall mean those laws enacted by the State of California, as they may be amended.
Contract	The complete agreement between OWNER and D-BE covering the Project, as represented by the Contract Documents.

Term	Definition
Contract Documents	Documents comprising the complete agreement between OWNER and D-BE as enumerated in the "CONTRACT DOCUMENTS" Section of the Agreement.
Contract Price	The total dollar amount of the Contract identified in the "CONTRACT PRICE AND TIME" Section of the Agreement as it may be adjusted in accordance with the "CHANGES" Section of the General Conditions.
Contract Time	The number of calendar days specified in the "CONTRACT PRICE AND TIME" Section of the Agreement that D-BE has to complete the work after the issuance of a Notice to Proceed for a GMP package, as it may be adjusted in accordance with the "CHANGES" Section of the General Conditions.
Contract Unit Price	The amount stated in the GMP Proposal for a single unit of an item of work.
Design-Build Entity (D-BE)	The Respondent ("Party") awarded the Contract by OWNER.
COUNTY	The County of Orange, a political subdivision of the State of California, and its representatives.
DISTRICT	Orange County Flood Control District
Defective Work	D-BE's performance that does not conform to the requirements of the Contract Documents, industry standards, manufacturers' recommendations, or requirements of the "QUALITY OF MATERIALS AND WORKMANSHIP" Section of the General Conditions.
Director	Except where otherwise provided, references to "Director" shall mean the Director of OC Public Works or his or her designee.
Dust Control Plan	D-BE's plan for compliance with OWNER's Fugitive Dust Emission Control Plan in conformance with the SCAQMD Rule 403 (See the "PERFORMANCE" Section of the General Conditions.)
Emergency/Contingency Plan	D-BE's provisions for handling spills of hazardous, liquid, or nuisance materials prepared in accordance with the "HAZARDOUS OR CONTAMINATED MATERIALS" subsection of the "PERFORMANCE" Section of the General Conditions.
Engineer of Record	The D-BE's California-registered engineer in responsible charge for the design of the Project and whose seal appears on the Plans, Specifications, and Special Provisions.
Final Payment	The last and complete payment by OWNER to D-BE under the Contract as provided by the "PAYMENTS" Section of the General Conditions.
Guaranteed Maximum Price (GMP) Proposal	A GMP Proposal is an offer made by the D-BE to the OWNER in accordance with the Instructions to Respondents.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.

Term	Definition
Health and Safety Plan (H&SP)	D-BE's detailed provisions for compliance with all applicable health and safety laws, orders and regulations. (See the "PERFORMANCE" Section of the General Conditions.)
Liquidated Damages	Damages specified in the "LIQUIDATED DAMAGES" Section of the Agreement, payable to OWNER for D-BE's failure to complete the work within the Contract Time.
Lump Sum (LS)	"Lump Sum", "L.S.", or "Job" prices are paid according to a flat total for all labor, materials, overhead, and other costs associated with the work item. (See the "PAYMENTS" Section of the General Conditions.)
Manifests	Required documents that identify the generator, transporter, disposal facility and type of hazardous material(s). Manifests include but are not limited to: documents entitled Uniform Hazardous Waste Manifest(s), Bills of lading, or similar documentation concerning the handling, transportation, and disposal of materials (See the "HAZARDOUS OR CONTAMINATED MATERIALS" subsection of the "PERFORMANCE" Section of the General Conditions.)
Notice of Completion	The document recorded by OWNER in accordance with Civil Code Section 9204 after completion of the work.
Notice of Termination	OWNER's notice to D-BE specifying the effective date of a termination of the Contract (in whole or in part) .
OWNER	The Orange County Flood Control District
Party / Parties	The OWNER and/or D-BE.
Plans	The drawings, profiles, cross sections, standard plans, working drawings, and shop drawings, or reproductions thereof, approved by OWNER, which show the location, character, dimensions, or details of the Project.
Project	All work performed by D-BE as required by, and in strict accordance with, the Contract Documents.
Project Manager (PM)	The OWNER representative identified in the Contract Documents or otherwise specified by OWNER in writing.
Reference Specifications	Those bulletins, standards, rules, methods of analysis or testing, codes, and specifications of other agencies, engineering societies, or industrial association referred to in the Contract Documents. These shall refer to the latest edition, including amendments in effect and published at the time of advertising the Contract or issuing the permit, unless specifically referred to by edition, volume, or date.
Request for Change	D-BE's request that OWNER issue a Change Order.
Retention	The amount of progress payments withheld by OWNER as security for D-BE's complete and proper performance of the Contract as provided by the "PAYMENTS" Section of the General Conditions.
Retention Payment	Payment of the Retention in accordance with Public Contract Code 7107 and the "RETENTION PAYMENT" Section of the General Conditions.



Term	Definition
Schedule of Values	D-BE's detailed breakdown of unit prices and costs of services, labor, and materials pursuant to the "PROJECT SCHEDULE AND SCHEDULE OF VALUES" Section of the General Conditions.
Schedule Update(s)	D-BE's monthly update of work progress. (See the "PROJECT SCHEDULES" and "PAYMENTS" Sections of the General Conditions.)
Special Provisions	The portion of the Contract Documents describing the specific requirements of the Project, which may include additions and revisions to the Standard Specifications setting forth conditions and requirements peculiar to the Project.
Standard Plans	Details of standard structures, devices, or instructions referred to on the Plans or in the Special Provisions by title or number.
Standard Specifications	The Standard Specifications for Public Works Construction (SSPWC), known as the "Greenbook," 2015 Edition, Parts 2 through 5, including any supplements effective as of the time of Bid opening.
Subcontractor(s)	A person, firm or corporation having an independent Contract with the D-BE to furnish services required as its independent professional consultant or perform portions of the work with respect to the Project. May be herein referred to as sub-consultant or subcontractor.
Submittals	Items that the Contract Documents require D-BE to submit to OWNER after award of the Contract and issuance of the Notice to Proceed, as provided by the "SUBMITTALS" Section of the General Conditions.
Supplemental General Conditions	The portion of the Contract Documents identified describing additions and revisions to the General Conditions setting forth conditions and requirements peculiar to the Project.
Traffic Control Plan (TCP)	D-BE's provisions for coordination of its traffic at the Project site. (See the "PERFORMANCE" Section of the General Conditions.)
Unilateral Change Order	A Change Order issued by the OWNER where OWNER and D-BE cannot reach an agreement on a proposed modification to the Contract.

## 2. COMPLIANCE WITH LAWS AND REGULATIONS

D-BE shall strictly adhere to and obey all applicable laws, statutes, codes, ordinances, rules, regulations, tariffs, and orders of any local, State, or federal governmental or regulatory authority having jurisdiction over the Project.

## 3. D-BE'S LICENSE

At all times during the term of this Contract, D-BE shall: (a) maintain in good standing all licenses required by the State of California or any other governmental entity for it to perform the work required under the Contract; and (b) comply in all respects with the California D-BEs' State License Law, Business & Professions Code Section 7000, et seq.

#### **4. SUBCONTRACTS**

##### **4.1. LICENSED SUBCONTRACTOR**

Each Subcontractor selected for the work shall be licensed in the State of California in the Subcontractor's particular field.

D-BE shall comply with Public Contract Code Section 22166(b) for the award of subcontracts exceeding one-half of one percent of the contract price allocable to construction work.

(b) Following award of the design-build contract, the design-build entity shall proceed as follows in awarding construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work:

(1) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the local agency, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

(2) Establish reasonable qualification criteria and standards.

(3) Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The foregoing process does not apply to construction subcontractors listed in the original proposal. Subcontractors awarded construction subcontracts under this subdivision shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

##### **4.2. COMMUNICATIONS**

Communications with Subcontractors shall be made through D-BE except when in emergency situations D-BE is not readily available, in which case detailed instructions shall be transmitted to Subcontractors directly.

##### **4.3. RESPONSIBILITY**

D-BE shall give personal attention to the fulfillment of the work and shall keep the work under its control. D-BE shall be responsible for all work required by the Contract Documents and the acts and omissions of Sub-consultants, Subcontractors, and all persons directly or indirectly employed by them as D-BE is for D-BE's acts and omissions and of persons directly or indirectly employed by D-BE. D-BE shall indemnify and hold OWNER harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor were the D-BE's employee. D-BE shall pay each Subcontractor promptly the amount allowed D-BE on account of such Subcontractor's work to the extent of such Subcontractor's interest therein.

##### **4.4. CONTRACTUAL RELATIONS**

Nothing contained in this Contract shall create any contractual relations between OWNER and any Subcontractor.

##### **4.5. LISTING AND SUBSTITUTION OF SUBCONTRACTORS**

D-BE shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq. D-BE may not substitute a person or entity in place of any subcontractor listed in the Proposal except with OWNER's written approval in compliance with the provisions of Public Contract Code Sections 4107 et seq.

## **5. IMPLEMENTATION OF CONTRACT DOCUMENTS**

### **5.1. PLANS AND SPECIAL PROVISIONS**

5.1.1. Checking: D-BE shall implement the Quality Assurance / Quality Control (QA/QC) Plan as prescribed in the Design Services Contract to include constructability and biddability reviews during the Plans, Specifications, and Estimates (PS&E) Development Process. Prior to construction, the D-BE shall review all Contract Documents and shall promptly notify OWNER of any discrepancies and provide the recommended resolution for Owner concurrence. D-BE shall notify OWNER about the absence of a specification or detail and provide the missing information to the Owner. Such an absence shall not excuse D-BE from following standard practices in the industry. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Larger-scale, more detailed drawings shall in general govern over smaller-scale, less detailed drawings. Architectural and engineering schedules shall take precedence over other portions of the Plans. D-BE shall compare all Plans and verify the dimensions before laying out the work and will be responsible for any errors that might have been avoided by doing so. If measurements are affected by site conditions, D-BE shall take new measurements for which D-BE bears full responsibility, and which shall be treated as if represented in the final, Owner approved Plans and Special Provisions.

5.1.2. Omissions and Mistakes: D-BE shall call to OWNER's attention, as soon as identified, any omissions in the final, Owner approved Plans and Special Provisions necessary to carry out the intent of the Contract Documents or that are customarily performed. The D-BE shall promptly notify the OWNER in writing of the correction. If warranted, D-BE shall request a Change Order in accordance with the "CHANGES" Section of these General Conditions. D-BE shall not make any adjustment to the work without first receiving the OWNER's approval, such adjustment without OWNER approval shall be at D-BE's own risk and expense.

5.1.3. Conflicting Information: In case of conflicting information in the Contract Documents, D-BE's GMP Proposal shall include the most expensive alternative.

5.1.4. Documents at the Site: D-BE shall keep available at the site for ready reference a complete set of the Contract Documents. D-BE also shall maintain a complete set of approved shop drawings, manufacturers' recommendations and instructions, and copies of all Project correspondence at the site. D-BE shall provide OWNER with a set of manufacturers' recommendations and instructions.

5.1.5. "As-Built" Plans at the Site: D-BE shall maintain at the site a complete "As-Built" set of Plans for the Project. D-BE shall update the As-Built Plans each day. D-BE shall make As-Built Plans available to OWNER immediately upon request. Any delay by D-BE in providing OWNER with access to properly updated As-Built Plans may result in a commensurate delay in OWNER's processing of progress payment applications. Prior to final payment, D-BE shall deliver a complete set of the As-Built Plans to OWNER in a format acceptable to OWNER and suitable for use in preparing a reproducible set of record drawings for the Project.

5.1.6. Deviations: D-BE shall not deviate from the final, approved Plans and the dimensions shown therein, without first obtaining OWNER's written permission for the deviation.

### **5.2. DIVISIONS OF THE SPECIAL PROVISIONS**

5.2.1. For convenience, the Special Provisions are arranged in many divisions and sections, but such separations shall not be considered as the limits of the work of any type or as the limits of the work required for any subcontract or trade. D-BE shall bear sole responsibility for defining the scope of work for each trade and each of its Subcontractors. OWNER will not be responsible for any division of work

among the various Subcontractors or trades regardless of the location of applicable provisions in the Special Provisions.

5.2.2. Any description of work included in a section is listed for convenience only and shall not be considered a prescriptive or comprehensive list of items of work necessary to complete the work of that section.

5.2.3. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the work.

### **5.3. PRECEDENCE OF CONTRACT DOCUMENTS**

If there is a conflict among Contract Documents, the document highest in precedence shall control.

The precedence shall be:

- 5.3.1. Permits and applicable regulations as may be provided by law or that govern the site;
- 5.3.2. Amendments and Change Orders;
- 5.3.3. Construction Contract Agreement;
- 5.3.4. Design Contract Agreement;
- 5.3.5. Proposal, as accepted by OWNER;
- 5.3.6. Addenda and Bulletins;
- 5.3.7. Special Provisions;
- 5.3.8. Supplemental General Conditions;
- 5.3.9. General Conditions;
- 5.3.10. Plans;
- 5.3.11. Standard Plans;
- 5.3.12. Standard Specifications; and
- 5.3.13. Reference Specifications, Attachments, and Appendices.

## **6. PRE-CONSTRUCTION**

### **6.1. D-BE'S PRE-CONSTRUCTION OBLIGATIONS**

Prior to beginning construction, D-BE shall: visit the site; verify measurements; verify all existing conditions; examine all adjoining work; and ascertain the best means of executing the work. D-BE's or each Subcontractor's commencement of the work of its trade will be interpreted as D-BE's acceptance of existing conditions over which the new work must be placed, installed, or otherwise performed. The D-BE is ultimately responsible for all necessary field investigations needed to confirm and document the existing conditions. As prescribed in the Design Services Contract, the D-BE shall identify and perform all testing required to adequately design and construct the project such as: geotechnical investigations, utility surveys, topographic surveys, test borings, hazardous material, destructive testing, and review with the OWNER's Project Manager.

## **7. BONDS, INDEMNITY, AND INSURANCE**

### **7.1. BONDS**

#### **7.1.1. Payment and Performance Bonds**

Within 10 days after award of the Contract, D-BE shall furnish a payment bond for 100% of the amount of the Contract, in accordance with Civil Code Section 9554, and a performance bond for 100% of the amount of the Contract, guaranteeing the faithful performance of the Contract. D-BE shall take steps to

assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price as a result of Change Orders.

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 Instructions to Respondent(s) and are subject to approval by the OWNER.

#### 7.1.2. OWNER's Right to Replace Surety

If any surety upon any bond furnished in connection with this Contract becomes objectionable to OWNER and fails to submit to OWNER 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 D-BE shall promptly furnish such additional security as may be required by OWNER to protect the interests of OWNER 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.

### 7.2. INDEMNIFICATION

To the maximum extent allowable by law, D-BE agrees to indemnify, defend with counsel approved in writing by Owner and hold **County of Orange, Orange County Flood Control District, City of Huntington Beach**, 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 OWNER 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 or other performance provided by D-BE pursuant to this CONTRACT. This indemnity applies even in the event of OWNER or County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require D-BE to indemnify OWNER or County Indemnitees for losses caused by OWNER's or County Indemnitees' active negligence, sole negligence, willful misconduct, or defects in design furnished by them.

D-BE's indemnity obligation set forth above shall include but not be limited to all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (1) failure of D-BE to comply with its obligations under the Contract Documents, (2) injury or death of any person or damage to property resulting from the construction of the work or by or in consequence of any negligence in protecting the work; (3) use of materials or other things used or employed in the construction that are not in conformance with the Contract Documents; and (4) any negligent or intentional act or omission by D-BE and any of its respective officers, employees, agents, subcontractors, suppliers, and representatives during the progress of the work or at any time before its completion and final acceptance.

If judgment is entered against D-BE and OWNER by a court of competent jurisdiction because of the concurrent active negligence of OWNER or County Indemnitees, D-BE and OWNER agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

### 7.3 INSURANCE

Prior to the provision of services under this Contract, D-BE agrees to purchase all required insurance at D-BE's expense, including all endorsements required herein, necessary to satisfy OWNER that the insurance provisions of this Contract have been complied with. D-BE 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 D-BE pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for D-BE. 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 D-BE pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for D-BE.

D-BE shall ensure that all Subcontractors performing work on behalf of D-BE pursuant to this Contract shall be covered under D-BE's insurance as an additional insured or maintain insurance subject to the same terms and conditions as set forth herein for D-BE. D-BE shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by OWNER from D-BE under this Contract. It is the obligation of D-BE 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 D-BE through the term of this Contract for inspection by OWNER 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 OWNER's Risk Manager, or designee, upon review of D-BE's current audited financial report. If D-BE's SIR is approved, D-BE, 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 OWNER harmless against any and all liability, claim, demand or suit resulting from D-BE's, its agents, employee's or subcontractor's performance of this CONTRACT, D-BE shall defend the OWNER at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. D-BE'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 D-BE's SIR provision shall be interpreted as though the D-BE was an insurer and the OWNER was the insured.

If D-BE fails to maintain insurance acceptable to OWNER for the full term of this Contract, OWNER may terminate this Contract pursuant to the "TERMINATION FOR CAUSE" Section of these General Conditions.

#### 7.3.1 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, OWNER retains the right to approve or reject a carrier after a review of the carrier's performance and financial ratings.

**7.3.2 Minimum Policy Limits and Coverage**

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

<b><u>Coverage</u></b>	<b><u>Minimum Limit(s)</u></b>
Commercial General Liability	\$25,000,000 per occurrence \$25,000,000 aggregate
Professional Liability Coverage applicable to D-BE's Engineer of Record	\$1,000,000 per claim or occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Pollution Liability including Non-Owned Disposal Sites (NODS)	\$5,000,000 per occurrence \$5,000,000 aggregate

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

<b><u>Coverage</u></b>	<b><u>Minimum Limit(s)</u></b>
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	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

**7.3.3 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.

**7.3.4 Required Endorsements**

The Commercial General Liability 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, Orange County Flood Control District, City of Huntington Beach, and their elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 0413, or a form at least as broad evidencing that D-BE's insurance is primary and any insurance or self-insurance maintained by the **County of Orange, Orange County Flood Control District, City of Huntington Beach** 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).

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

- 1) An Additional Insured endorsement naming the **County of Orange, Orange County Flood Control District, City of Huntington Beach**, and their respective elected and appointed officials, officers, employees and agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that A-ED-BE's insurance is primary and any insurance or self-insurance maintained by the **County of Orange, Orange County Flood Control District, City of Huntington Beach**, 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, Orange County Flood Control District, City of Huntington Beach, and their respective elected and appointed officials, officers, employees and agents**, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.

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

D-BE shall notify OWNER 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 OWNER. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the OWNER 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.



OWNER expressly retains the right to require D-BE 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 OWNER.

OWNER shall notify D-BE in writing of changes in the insurance requirements. If D-BE does not deposit copies of acceptable Certificates of Insurance and endorsements with OWNER incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to D-BE, and OWNER shall be entitled to all legal remedies.

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

#### **7.4 RESPONSIBILITY FOR DAMAGES OR INJURY**

7.4.1 OWNER 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 D-BE, its employees, or its Subcontractors. D-BE shall indemnify and defend OWNER against any claims or liability under this section pursuant to the "INDEMNIFICATION PROVISIONS" Section of these General Conditions.

7.4.2 D-BE shall remove and dispose of any waste materials, including soils or other materials that become contaminated directly or indirectly as a result of D-BE's performance under this Contract, according to the "HAZARDOUS OR CONTAMINATED MATERIALS" Section of the General Conditions.

7.4.3 Payment of any penalties, fines, or other liability assessed to OWNER by regulatory agencies due to D-BE's or any Subcontractor's action or inaction in performing the work shall be D-BE's sole responsibility.

7.4.4 D-BE shall pay any assessments or damages covered by this Section directly, or, at OWNER's discretion, OWNER may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to D-BE.

### **8 SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS**

#### **8.1 PROJECT SCHEDULES**

8.1.1 Project Schedules: Prior to OWNER's issuance of the Notice to Proceed, D-BE shall submit to OWNER for OWNER's review an initial construction progress schedule. OWNER's acceptance of the initial construction progress schedule shall be conditioned on its acceptance of all other documents D-BE is required to submit to OWNER by the "CONTRACT TIME" Section of the Agreement. OWNER's acceptance of this schedule does not modify any of the provisions of the Contract Documents including, but not limited to, the Contract Time or any time specified in the Contract Documents for OWNER's review of submittals.

Once the Notice to Proceed is issued, the Project Schedule shall be updated to reflect the Contract Time as defined in the Agreement. D-BE shall prepare the Project Schedule using the critical path format. The D-BE shall submit to the Owner for acceptance of the updated Critical Path Method (CPM) Project Schedule for the project within 30 calendar days after execution of the Contract or at the preconstruction conference, whichever is earlier. Unless a specific software application is called for elsewhere in the Contract Documents, D-BE shall use Microsoft Project, SureTrak Project Manager, Primavera Project Planner, or

other scheduling software acceptable to OWNER to configure all versions of its construction progress schedule.

D-BE shall include on the Project Schedule the schedule for submittals, shop drawings, procurement, fabrication, and delivery for major materials and equipment required for the Project and shall allow no less than 21 days for OWNER's review of each such submittal. After D-BE's updated Project Schedule is accepted by OWNER, it will be designated as the "Accepted Project Schedule". An Accepted Project Schedule is a condition precedent to OWNER's obligation to make the initial progress payment to D-BE.

The CPM Project Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of D-BE's work. The CPM Project Schedule shall include detailed schedule diagrams and schedule data as described below for the entire Contract Period and include activities for deliverables and reviews in the schedule. Sufficient liaison shall be conducted, and information provided, to indicate coordination with utility owners having facilities within the project limits. The schedule must reflect the utility adjustment schedules included in the Contract Documents, unless changed by mutual agreement of the utility company, the D-BE and the OWNER.

Failure to include any element of work or any activity relating to utility work will not relieve the D-BE from completing all work within the Contract Time at no additional time or cost to the OWNER, notwithstanding the acceptance of the schedule by the OWNER.

The CPM Project Schedule may indicate a completion date in advance of the expiration of Contract Time. However, the OWNER will not be liable in any way for the D-BE's failure to complete the Project prior to expiration of Contract Time. Any additional costs, including extended overhead incurred between the D-BE's scheduled completion date and the expiration of Contract Time, shall be the responsibility of the D-BE. The D-BE shall not be entitled to claim or recover any such costs from the OWNER.

8.1.2 Weekly Meetings and Look-Ahead Charts: D-BE shall participate in weekly meetings with OWNER during which the parties shall exchange information regarding the actual progress of construction. OWNER and D-BE shall attempt to agree upon quantities and percentages of completion that reflect the actual progress of construction. At each meeting D-BE shall submit 4 copies of a 2-week look-ahead chart. The 2-week look-ahead chart shall include only those activities that will be started, in progress, or completed during the next 2-week period. The format of the look-ahead chart shall be subject to OWNER's approval.

8.1.3 Monthly Schedule Updates: Each month, D-BE shall submit to OWNER for its review an update of the Accepted Project Schedule. The monthly Schedule Update shall reflect agreed assessments of actual completion reached during weekly meetings. If OWNER and D-BE cannot agree, then D-BE shall use OWNER's assessment of actual progress to prepare the Schedule Update. D-BE's monthly Schedule Update shall include: (a) a diagram showing the target versus actual dates for each activity; (b) an updated critical path method report; and (c) a narrative report that includes, but is not limited to, a description of problems, current and anticipated delays and their causes, impacts of delays, and corrective actions that D-BE has taken or proposes to take to overcome problems and recover from delays. D-BE shall identify any events that will delay the completion of an interim milestone or the completion of the overall Project in the monthly Schedule Update. On OWNER's acceptance of the monthly Schedule Update, it shall become the current Accepted Project Schedule. Any request for an extension of the Contract Time must be based on the Accepted Project Schedule. The submission of an acceptable monthly Schedule Update will be part of the basis of the progress payment and shall be a condition precedent to OWNER's obligation to make such progress payment to D-BE.

8.1.4 Recovery Schedule: If any activity on the critical path is more than 7 days behind the Accepted Project Schedule and it appears that D-BE may not complete all work within the Contract Time, then OWNER may require D-BE to submit a recovery schedule demonstrating its proposed plan to make up all lost time and complete the Project within the Contract Time. D-BE shall submit its recovery schedule within 7 calendar days of OWNER's request. If OWNER finds the proposed recovery schedule unacceptable, it may require D-BE to submit a revised plan or to take actions that are, in OWNER's judgment, necessary to recapture lost time, including but not limited to increasing: (a) manpower; (b) the number of working hours per day; (c) the shifts per working day; (d) the number of working days per week; (e) the amount of equipment; or (f) any combination of the foregoing. D-BE's entitlement to additional compensation, if any, will be determined in accordance with the provisions of the "CHANGES" Section of the General Conditions.

## **8.2 SCHEDULE OF VALUES**

Within 14 calendar days of the issuance of the Notice to Proceed, D-BE shall submit a proposed Schedule of Values for OWNER's review and approval. The Schedule of Values shall include sufficient detail and be supported by sufficient data as OWNER, in its sole discretion, may deem necessary to substantiate its accuracy and to evaluate progress at any point in the Project. The Schedule of Values shall include the general categories noted in the GMP Proposal, subdivided into their various components for the costs of trade subcontractors' services, labor, and material based when possible upon actual subcontract, purchase order, or vendor prices. Subdivisions of work should be described by easily identifiable and measurable units.

## **8.3 D-BE'S SUBMITTALS**

8.3.1 General: D-BE shall submit to OWNER 6 copies of all submittals required by the Contract Documents, including but not limited to: shop drawings, working drawings, descriptions of materials and equipment to be supplied, supporting information, and other submittals (collectively "Submittals"). All submittals shall be provided at D-BE's expense. D-BE shall carefully review each Submittal before delivering it to OWNER. D-BE shall provide a signed, dated transmittal letter with each Submittal certifying that the Submittal is correct and in strict conformance with the Contract Documents. D-BE shall allow no less than 21 calendar days for OWNER to review each Submittal. D-BE is expected to make a complete and acceptable Submittal by the second submission as to any item, and OWNER reserves the right to withhold moneys otherwise due D-BE to cover additional costs of OWNER's reviews beyond the second Submittal.

8.3.2 OWNER's Review: When the Contract Documents require a Submittal, D-BE shall not furnish or fabricate any materials or equipment and shall not perform any work covered by the Submittal until OWNER has reviewed, approved, and notified D-BE that OWNER takes no exceptions to the Submittal. Any fabrication or other work performed in advance of receiving OWNER's notice of no exceptions shall be entirely at D-BE's risk and expense. D-BE is responsible for the correctness of each Submittal. OWNER's review of a Submittal shall not relieve D-BE from responsibility for any errors or omissions in the Submittal or from any performance requirements of the Contract Documents. In the transmittal letter that accompanies the Submittal, D-BE shall call to OWNER's attention any deviations from the Contract Documents. D-BE shall furnish all materials and perform all work for which Submittals are required in accordance with the Submittals that OWNER has reviewed and has taken no exception.

8.3.3 Working Drawings: Working drawings are drawings showing details not shown on the Plans, which details D-BE must design. D-BE must prepare working drawings of a sufficient size and scale to show clearly all necessary details. D-BE shall ensure that when required by California law or the Contract

Documents, working drawings are prepared by engineers holding valid professional licenses in the applicable engineering discipline.

8.3.4 Shop Drawings: Shop drawings are drawings showing details of manufactured or assembled products that D-BE proposes to incorporate into the work. D-BE shall submit the shop drawings required by the Contract Documents.

8.3.5 Supporting Information: Supporting information is information required by the Contract Documents or requested by OWNER when reviewing a submittal that OWNER determines is necessary to analyze and verify that the submittal conforms to the Contract Documents or will be needed by OWNER to operate and maintain a manufactured product or system to be constructed as part of the work. D-BE shall submit supporting information for a system bound together and include information about all manufactured items for the system. Unless otherwise specified in the Contract Documents, supporting information shall comply with applicable requirements of the Standard Specifications and may include the following at the discretion of OWNER:

8.3.5.1 List of Subcontractors;

8.3.5.2 List of Materials;

8.3.5.3 Manufacturer's certifications (or Certification of Compliance) that materials to be supplied meet the requirements of the Contract Documents, where the Contract Documents allow such certifications or OWNER waives materials testing requirements. OWNER may require materials test data as part of the certification;

8.3.5.4 Concrete mix designs;

8.3.5.5 Asphalt concrete mix designs;

8.3.5.6 Data including but not limited to catalog sheets, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other information necessary to describe a system, product or item. This information may be required for irrigation systems, street lighting systems, and traffic signals, and may also be required for any product, manufactured item, or system;

8.3.5.7 Pipeline layout diagrams; and

8.3.5.8 Controller Cabinet Wiring Diagrams.

#### **8.4 SUBSTITUTIONS – BRAND OR TRADE NAMES**

8.4.1 Unless OWNER has made a finding under Public Contract Code Section 3400(c), whenever the Contract Documents specify any materials, products, things, or services by brand, trade, or proprietary name, by patent, or by manufacturer, such specifications shall be deemed to be a measure of quality and utility or a standard and shall be deemed to be followed by the words "or equal".

8.4.2 If D-BE desires to use any other brand or manufacturer of equal quality, performance, and utility to that specified, it shall apply to OWNER in writing within 35 days after the award of the Contract. D-BE shall submit to OWNER 6 copies of each application for an "or equal" determination. D-BE's application shall include all information required for OWNER to evaluate the substitute items, including but not limited to shop drawings, product data, and certified test results.

8.4.3 D-BE shall have the item tested as required by OWNER to determine that the quality, strength, performance, physical, chemical, or other characteristics including but not limited to durability, finish, efficiency, dimensions, service, suitability, and compatibility with OWNER's operations are such that the

item will be equal in quality and utility to the item specified. D-BE'S written application constitutes its representation that:

8.4.3.1 D-BE has investigated the proposed item and determined that it meets or exceeds in all respects the quality, performance, and utility of the specified item.

8.4.3.2 D-BE will provide the same warranty as for the specified item.

8.4.3.3 D-BE will coordinate installation and make such modifications, which may be required for the work to be complete in all respects, with no addition to the Contract Time or the Contract Price.

8.4.3.4 D-BE waives all claims for reimbursement for additional costs which may subsequently become apparent by reason of the acceptance and use of such "or equal" materials, equipment, products, processes, or articles.

8.4.4 Owner will then determine, in its sole discretion, whether or not the proposed materials, products, things, or services are equal in quality, performance, and utility to those specified, and its decision shall be final and binding. D-BE shall not use or install any materials, products, things, or services proposed as "or equal" without Owner's prior approval. D-BE shall remain solely responsible for the suitability of such proposed material, products, things, or services notwithstanding any determination by Owner. D-BE shall bear all expenses associated with its application for determination of "or equal" status.

8.4.5 Any request by D-BE to change materials, products, things, or services required by the Contract Documents that does not fall within the above provisions relating to Public Contract Code Section 3400 shall be considered pursuant to the "CHANGES" Section of these General Conditions. OWNER will determine, in its sole discretion, whether or not to accept the requested change.

## **8.5 INSPECTION AND TESTING REQUIREMENTS**

8.5.1 Materials or Equipment Subject to Testing: Materials or equipment to be incorporated into the work will be subject to inspection and tests by OWNER or its designated representative. Before incorporation into the work, D-BE shall furnish without charge such samples as OWNER may require.

8.5.2 D-BE's Testing Responsibilities: Whenever testing is required by OWNER or these Contract Documents, D-BE shall perform such testing at its expense unless otherwise specified in the Plans or Special Provisions. D-BE shall deliver materials or equipment for testing at a location in the United States unless otherwise approved by OWNER. All tests shall be made by an independent testing agency or laboratory, registered with and approved by OWNER for the nature of work to be examined. If any tests indicate noncompliance with the Contract Documents, all retesting shall be provided at D-BE's expense.

8.5.3 Notice to OWNER: D-BE shall notify OWNER in writing of its intention to use materials or equipment for which tests are required as soon as such materials or equipment are available for testing. The notice shall specify the date on which D-BE intends to use the materials or equipment. The notice shall be provided so as to allow sufficient time to perform the tests, but in no event shall the notice be provided fewer than 15 days prior to D-BE's use of the materials or equipment. If D-BE fails to use the materials or equipment on the date specified in the notice, then OWNER may require retesting if OWNER determines that retesting is necessary to ensure the materials or equipment do not require replacement. The date and time of any tests shall be approved by OWNER. The notice shall identify the proposed supplier and source of material.

8.5.4 Inspection of Materials or Equipment at Source of Supply: OWNER may inspect, sample, or test materials or equipment at the source of supply, manufacturing plant, or other locations as appropriate; but such inspection, sampling, or testing will not be undertaken until OWNER is assured by D-BE of the cooperation and assistance of both D-BE and the supplier of the material. D-BE shall ensure that adequate

facilities are furnished free of charge to make such inspections. D-BE shall ensure that OWNER has free access at all times to the materials or equipment to be inspected, sampled, or tested. D-BE shall provide safety measures as necessary to protect OWNER personnel or representatives from construction activities while making field tests.

8.5.5 Inspection of Production or Manufacturing Process: OWNER may inspect the production or manufacture of materials or equipment at the source of supply. Such plant inspection, however, will not be undertaken until OWNER is assured of the cooperation and assistance of both D-BE and the materials producer or equipment manufacturer. OWNER or its authorized representative shall have free entry at reasonable times to such parts of the plant as concern the manufacture or production of the materials or equipment.

8.5.6 Inspection Does Not Guarantee Acceptance: Inspections and tests shall in no way be considered a guarantee of acceptance of such materials or equipment, nor of continued acceptance of materials or equipment presumed to be similar to that upon which inspections and tests have been made. Inspection and testing performed by OWNER shall not relieve D-BE or D-BE's suppliers of responsibility for quality control or otherwise limit its warranty obligations or other obligations related to quality of work required by the Contract.

8.5.7 Records of Inspections: D-BE may examine reports and records of inspections that are OWNER's obligation to perform when such reports and records are available at the work site.

8.5.8 Certificate of Compliance/Manufacturer's Certification: D-BE shall furnish a Certificate of Compliance prior to using any materials for which the Contract Documents require such a certificate. The form of the Certificate shall be as directed by OWNER. As authorized by the Contract Documents, OWNER may permit the use of materials or equipment accompanied by a Certificate of Compliance prior to sampling and testing. The Certificate shall be signed by the producer and shall state that the materials or equipment comply in all respects with the requirements of the Contract Documents. D-BE shall furnish a Certificate of Compliance with each lot of materials or equipment delivered to the work, and the lot so certified shall be clearly identified in the Certificate.

All materials or equipment used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that materials or equipment are used on the basis of a Certificate of Compliance shall not relieve D-BE of responsibility for using materials or equipment that conform to the requirements of the Contract Documents, and any materials or equipment not conforming to such requirements will be subject to rejection whether or not in place. OWNER reserves the right to verify that supplied materials or equipment comply with the Contract Documents through inspection, testing, or any other manner as may be provided for in the Contract Documents notwithstanding receipt of a Certificate of Compliance.

8.5.9 Cooperation by Contractor: D-BE shall not perform work or furnish materials without obtaining inspection by the OWNER. D-BE shall provide the OWNER with safe means of access to the work, so the OWNER can determine whether the work performed, and materials used are in accordance with the requirements and intent of the Contract Documents. If the OWNER so requests at any time before final acceptance of the work, the D-BE shall remove or uncover such portions of the finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. If the OWNER determines that the work so exposed or examined is unacceptable, D-BE shall perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the OWNER. However, if the OWNER determines that the work thus exposed or examined is acceptable, the OWNER will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed in accordance with 14.2.

8.5.10 Failure of Owner to Reject Work During Construction: If, during or prior to construction operations, the OWNER fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered or obligates the OWNER to final acceptance. The OWNER is not responsible for losses suffered due to any necessary removals or repairs of such defects.

8.5.11 Failure to Remove and Renew Defective Materials and Work: If the D-BE fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the OWNER has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the D-BE's expense. The OWNER will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the D-BE fails or refuses to make, by deducting such expenses from any moneys due or which may become due the D-BE, or by charging such amounts against the Contract bond.

8.5.12 Corrections for Construction Errors: For work that the D-BE constructs incorrectly or does not meet the requirements of the Contract Documents, the D-BE has the prerogative to submit an acceptance proposal to the OWNER for review and disposition. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the effect on Contract Time. The OWNER will judge any such proposal for its effect on these criteria and also for its effect on Contract Administration.

When the OWNER judges that a proposal infringes on the structural integrity or maintainability of the structure, the D-BE's Engineer of Record will perform a technical assessment and submit it to the OWNER for approval. The D-BE shall not take any corrective action without the Owner's written approval. The D-BE shall carry out all approved corrective construction measures at no expense to the OWNER.

Notwithstanding any disposition of the compensation aspects of the defective work, the OWNER's decision on the technical merits of a proposal is final.

## **9 PAYMENTS**

### **9.1 PAYMENT REQUIREMENTS**

9.1.1 Form and Contents of Applications for Payment: D-BE must submit applications for payment on a form approved by OWNER.

Each application for payment must include:

- A. A current Schedule of Values (when requested) and monthly Schedule Update with a narrative report, all approved in writing by OWNER and all developed in accordance with the "SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS" Section of the General Conditions. D-BE's submissions of an Accepted Project Schedule, monthly Schedule Updates, and Schedule of Values are conditions precedent to OWNER's processing of applications for payments;
- B. Photographic documentation of completed work (if requested);
- C. If requested, D-BE shall provide three copies of certified payrolls from D-BE and all Sub-consultants and Subcontractors for the period covered by the application for payment, with

one copy having all pertinent information visible and two copies having the workers' names, addresses, and social security numbers blacked out;

- D. Evidence satisfactory to OWNER that D-BE is fulfilling its obligations under the Contract Documents with respect to preparing daily reports and maintaining up-to-date As-Built Plans;
- E. Conditional waivers and releases on progress payment or final payment (as applicable) from D-BE, those Subcontractors of any tier, and those suppliers claiming funds covered by the application for payment, and unconditional waivers and releases on progress payment or final payment from D-BE, those Subcontractors of any tier, and those suppliers who received funds through the preceding applications for payment, all in the form prescribed by Civil Code Sections 8120 through 8138; and
- F. Any other administrative documentation as agreed upon.

The application for payment shall show the total value of work completed or partially completed as of the date of submission of the application for payment. At OWNER's sole discretion, the value of the work completed may include up to 50% of the value, as determined by OWNER, of: (i) material delivered to the Project site and not yet incorporated into the construction; and/or (ii) materials delivered to D-BE and stored at locations other than the Project site, provided that D-BE furnishes OWNER satisfactory evidence that D-BE has acquired title to the materials, the materials will be used on the Project, the materials are properly stored at a secure off-site location acceptable to OWNER, and the materials at each storage location are segregated from any other materials there that are not intended for use on the Project. OWNER will not pay D-BE for any materials at the Project site that are furnished but are not to be incorporated into the work.

OWNER reserves the right to adjust a payment application if a prior payment application is determined to have been overstated or understated.

9.1.2 **Lump Sum Work and Unit Prices:** OWNER shall pay for work shown on the GMP Proposal as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Work for which the GMP Proposal shows a unit price will be paid for at the actual quantities constructed in accordance with the Contract Documents, not at the quantities shown in the GMP Proposal. Upon completion of the work, if the actual quantities show either an increase or decrease from the quantities stated in the GMP Proposal, the unit price stated in the GMP Proposal will apply unless a change to the unit price is warranted under the "CHANGES" Section of the General Conditions.

9.1.3 **Allowances:** Payment for any Allowance identified in the GMP Proposal shall be for direct cost reimbursement only, unless the GMP Proposal identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for Allowances based on T&M pricing shall be proposed by D-BE subject to OWNER's acceptance using the same criteria and proposal breakdown as that specified in the "Time-and-Materials Change Orders" subsection of the "CHANGES" Section of the General Conditions. Any work to be performed in connection with any Allowance identified in the GMP Proposal must first be approved in writing by OWNER. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to the Contract consistent with "CHANGES" Section of the General Conditions, but in such event, there shall be no markup for overhead and profit on the additional actual costs. Upon completion of the Project, each Allowance will be corrected for unused balances and a credit to the



Contract Price will be issued by Change Order to reflect the actual sums authorized for work as Allowance items.

9.1.4 Time for Submitting and Reviewing Applications for Payment: D-BE shall submit each application for payment to OWNER for its review on the last business day of the month for which it is seeking payment. OWNER will review the application for payment as soon as practicable and, no later than 7 days after receiving it or as provided by Public Contract Code Section 20104.50, will return to D-BE any application for payment that OWNER determines is not a proper application for payment suitable for payment along with a written explanation of the reasons why the application for payment is not proper. The grounds on which the OWNER may conclude the application for payment is not proper and not suitable for payment include, but are not limited, to: (i) the application is missing documents required under the preceding Section "Form and Contents of Applications for Payment"; (ii) the application does not accurately reflect the progress of the work; (iii) the quality of the work is not in conformance with the requirements of the Contract Documents; (iv) D-BE has failed to remedy defective work; (v) there are third party claims filed against OWNER arising out of D-BE's work; (vi) D-BE has failed to make payments properly to subcontractors and suppliers; (vii) D-BE has damaged OWNER's property or the work by or property of OWNER's separate D-BEs; (viii) D-BE has repeatedly failed to carry out the work in accordance with the Contract Documents; or (ix) there is reasonable evidence that D-BE will not complete the work within the Contract Time and that the unpaid balance of the Contract Price would not be adequate to cover the Liquidated Damages for the anticipated delay.

9.1.5 Progress Payments: Within 30 days of receiving an undisputed, properly completed application for payment, or as provided by Public Contract Code Section 20104.50, OWNER shall pay to D-BE a sum equal to 95% of the value of the work completed since the commencement of the work, less all previous payments. OWNER shall hold 5% of the value of the work completed as Retention until the Retention Payment is made pursuant to Public Contract Code Section 7107. D-BE may be entitled to interest pursuant to Public Contract Code Section 20104.50 if OWNER fails to timely make any progress payment. No progress payment by OWNER shall be considered to be OWNER's acceptance of any part of the work.

9.1.6 Retention Payment: Payment of the Retention amount will be made in accordance with Public Contract Code Section 7107. If the Retention Payment is made before D-BE has complied with all of its obligations under the Contract, then payment of Retention shall not be interpreted as Final Payment and shall not relieve D-BE of its obligations under the Final Payment provisions.

9.1.7 Final Payment: The Final Payment, if unencumbered, or any part thereof unencumbered, shall be made no later than 60 days after D-BE completes the work and submits an application for Final Payment in proper form and suitable for payment. D-BE's work will not be complete until D-BE has delivered: (i) As-Built Plans suitable for use in preparing a reproducible set of record drawings for the Project; (ii) all operations and maintenance manuals; (iii) manufacturers', suppliers', and installers' warranties, guarantees, instruction sheets, and parts lists; and (iv) any other documents or information required by the Contract Documents as a condition to completion of the work.

D-BE's application for Final Payment shall include:

9.1.7.1 D-BE's affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied by D-BE; and

9.1.7.2 Conditional waivers and releases on Final Payment in the form prescribed by Civil Code Section 8136 from D-BE, its Subcontractors of any tier, and its suppliers who will receive funds from the Final Payment, listing with specificity any and all claims under or arising out of the Contract or the Project that remain unsettled.

9.1.8 Partial Payments for Delivery of Certain Materials: The OWNER will allow partial payments, in accordance with Section 9.1.1F, for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

9.1.8.1 There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.

9.1.8.2 The stockpiled material must be approved as meeting applicable specifications.

9.1.8.3 The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.

9.1.8.4 The D-BE shall submit to the OWNER certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material.

9.1.8.5 Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.

9.1.8.6 Partial payments will not be made for materials, which were stockpiled prior to award of the Contract for a project.

## **9.2 SUBSTITUTED SECURITY**

In accordance with Public Contract Code Section 22300 and at the request and expense of D-BE, prior to the award of the contract, OWNER will accept securities equivalent to any amount withheld by OWNER to ensure complete and proper performance under the Contract Documents, including the amount withheld as Retention under the "PAYMENTS" Section of the General Conditions. Substituted securities must meet the requirements of Public Contract Code Section 22300 and shall be deposited with OWNER or with a California or federally chartered bank in California as escrow agent. The securities shall be held by the escrow agent subject to a written escrow agreement between OWNER, D-BE, and escrow agent, which agreement shall be in a form substantially similar to that contained in Public Contract Code Section 22300.

## **9.3 WAIVER OF CLAIMS**

Unless a shorter time is specified elsewhere in the Contract, on or before making its application for Final Payment, D-BE shall submit to OWNER in writing all claims for compensation under or arising out of this Contract. D-BE's acceptance of OWNER's payment in response to D-BE's application for Final Payment shall constitute a waiver of all claims against OWNER under or arising out of this Contract except those previously made in writing and identified by D-BE as unsettled at the time of D-BE's application for Final Payment.

## **10 LABOR CODE REQUIREMENTS**

D-BE and all Subcontractors shall comply with all applicable requirements of the Labor Code throughout the performance of the Contract, including but not limited to the following:

### **10.1 WAGE RATES**

D-BE and any Subcontractor(s) shall comply with the provisions of California 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. D-BE shall post all job site notices as required by Labor Code Section 1771.4(a), including a copy of these wage rates for each craft, classification, or type of worker needed in the performance of this Contract. Copies of these rates are on file at the principal office of OWNER'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](http://www.dir.ca.gov). If the Contract is federally funded, D-BE 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.

## **10.2 WAGE RATE PENALTY**

D-BE and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. D-BE 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 D-BE or Subcontractor(s) under the Contract.

## **10.3 WORK HOUR PENALTY**

As provided by Labor Code Section 1810, 8 hours of labor shall constitute a legal day's work, and 40 hours shall constitute a legal week's work. The time of service of any worker employed under the Contract shall be restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as provided herein. D-BE shall forfeit to OWNER \$25, or a higher amount as provided by Labor Code Section 1813, for each worker employed in the performance of this Contract by D-BE or by any Subcontractor(s) for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except as provided by Labor Code Section 1815.

## **10.4 REGISTRATION OF D-BES**

D-BE and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of D-BEs pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.

## **10.5 PAYROLL RECORDS**

D-BE 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:

10.5.1 D-BE 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 D-BE or any Subcontractor(s) in connection with the work.

10.5.2 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:

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

10.5.2.2 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.

10.5.3 The payroll records shall be certified and shall be available for inspection at the principal office of D-BE on the basis set forth in Labor Code Section 1776.

10.5.4 D-BE shall inform OWNER 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.

10.5.5 Pursuant to Labor Code Section 1776, D-BE 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 D-BE or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to OWNER, 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. D-BE acknowledges that, without limitation as to other remedies of enforcement available to OWNER, 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 D-BE. D-BE is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.

## **10.6 APPRENTICES**

10.6.1 Unless the Contract involves a dollar amount less than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Section 1777.5. D-BE shall comply with Labor Code Section 1777.5 for all apprenticeable occupations.

10.6.2 D-BE and all Subcontractor(s) shall comply with Labor Code Section 1777.6, which forbids discriminatory practices in the employment of apprentices on any basis listed in Government Code Section 12940 (described in the "NONDISCRIMINATION" Section of the General Conditions), except as provided in Labor Code Section 3077.

10.6.3 D-BE shall comply with all requirements of California Public Contract Code Section 22164 (c) (1) regarding the use of a skilled and trained workforce.

(c)(1) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the local agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

## **11 NONDISCRIMINATION**

In the performance of the Contract, D-BE shall neither engage in nor permit its Subcontractors to engage in discrimination against any employee or applicant for employment on any basis listed in California Government Code Section 12940, including but not limited to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, as those bases are currently defined in Government Code Sections 12926 and 12926.1, or as they may be modified. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.

## **12 WARRANTY / GUARANTEES**

### **12.1 WARRANTY**

D-BE warrants that materials and equipment furnished under the Contract Documents will be new, of good quality, and carrying all available manufacturers' and installers' warranties; that construction will be of good and workmanlike quality; and that all of the work shall be performed in strict conformance with the requirements of the Contract Documents, industry standards, and manufacturers' recommendations. Work not conforming to these requirements shall be considered defective ("Defective Work"). Defective Work does not include damage caused by modifications not executed by D-BE or its Subcontractors, improper operation or maintenance, or normal wear and tear.

### **12.2 TWO YEAR CORRECTION PERIOD**

For a period of not less than two (2) years from the date OWNER accepts D-BE's work, as evidenced by a Notice of Completion issued by OWNER, D-BE shall take immediate action to correct any Defective Work reported by OWNER orally or in writing. D-BE shall initiate corrective action on Defective Work affecting use of a facility, safety, or preservation of property within twenty-four (24) hours after notification. D-BE shall initiate corrective action on other Defective Work within ten (10) calendar days after notification. If D-BE fails to initiate corrective action within the specified times or fails to complete the corrective work within a reasonable time, OWNER may take whatever corrective action it deems necessary. All costs incurred by OWNER because of D-BE's failure to correct Defective Work during the two-year correction period shall be due and payable immediately by D-BE. The two-year correction period relates only to the specific obligation of D-BE to return to the Project site and correct Defective Work. The two-year correction period does not establish a period of limitations with respect to any of D-BE's other obligations under the Contract Documents, including but not limited to D-BE's warranty, and it has no relationship to the time within which OWNER may seek to enforce the D-BE's obligation to comply with the Contract Documents or to the time within which proceedings may be commenced to establish the D-BE's liability with respect to any of the D-BE's obligations.

### **12.3 MANUFACTURERS' AND INSTALLERS' WARRANTIES**

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

### **12.4 SURVIVAL**

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

## **13 PERFORMANCE**

### **13.1 OTHER CONTRACTS**

OWNER may undertake or award other contracts for simultaneous, collateral, or additional work adjacent to or within the work site. D-BE shall fully cooperate with such other OWNER representatives, and

carefully fit D-BE's own work to such other work as may be directed by OWNER. D-BE shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, or additional work by others. D-BE shall not commit or permit any act that will interfere with the performance of work by OWNER or any other D-BE, and shall cooperate in the coordination of its separate activities in a manner that shall not interfere with OWNER's current facility operations and the activities of other D-BEs working in the area. D-BE shall include in its GMP Proposal all costs involved as a result of coordinating its work with others. If necessary for coordination purposes, D-BE shall redeploy its forces to other parts of the work.

### **13.2 PROTECTION**

13.2.1 D-BE shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. D-BE shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety and Health, as well as any State, County, or local mandates during the construction to safeguard the public. D-BE shall also be responsible for all materials delivered and work performed until completion and acceptance of the Project, except for any completed unit of construction that OWNER may have previously accepted.

13.2.2 D-BE shall maintain continuously adequate protection of all work from damage and shall protect OWNER's personnel, invitees, and property from damage, injury, or loss arising in connection with this Contract. D-BE shall make good any such damage, injury, or loss. D-BE shall adequately protect adjacent property and shall maintain reasonable security of the site at all times. D-BE shall limit visitors to the site to those necessary for construction and inspection. Visitors for other purposes shall be referred to OWNER. D-BE's and Subcontractors' employees shall possess means of identification at all times as required by OWNER while on the job site.

13.2.3 OWNER may notify D-BE of any noncompliance with the foregoing provisions and the action to be taken. D-BE shall, after receipt of such notice, immediately correct such conditions. Such notices shall be deemed sufficient for said purpose when delivered to D-BE or D-BE's representative at the work site. Failure of receipt of such notice from OWNER shall not relieve D-BE of responsibility for safety.

13.2.4 If D-BE fails or refuses to comply promptly, OWNER may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or additional compensation to D-BE. D-BE will be responsible for ensuring that D-BE's Subcontractors and suppliers comply with the provisions of this Section.

13.2.5 In an emergency affecting the safety of persons, the work, or of adjoining property, D-BE without special instruction or authorization from OWNER, is hereby permitted to act at D-BE's discretion to prevent such threatened loss or injury. D-BE shall so act if directed by OWNER. Any claim for additional compensation by D-BE on account of emergency work shall be determined as set forth in the "CHANGES" Section of these General Conditions.

### **13.3 FENCES AND BARRICADES**

- A. Furnish, erect and maintain all fences and barricades required by local ordinances, or public safety and necessary until completion of the project.
- B. Barricades to protect public from construction shall be sturdy, stable and robust and shall be free from projecting nails, boards or other hazards. The D-BE shall maintain barricades free from graffiti.
- C. No signs, other than those specified, shall be erected without the written approval of the OWNER.

- D. Remove construction fences, barricades, and other related temporary construction upon completion of work, or sooner if authorized or required to maintain Project progress.

### **13.4 PROJECT SIGN & NOTICE**

- A. No signs or advertisements will be permitted on the Project site, unless otherwise approved by the OWNER's Project Manager.
- B. D-BE (if required) shall furnish and install five 4 foot by 8-foot Project signs to be located at the Project site and shall contain the information as described in OCPW Std. Plan 1418.
- C. D-BE shall submit sign layout and proposal exact location for review and approval by the Owner's Project Manager.

### **13.5 QUALITY OF MATERIALS AND WORKMANSHIP**

13.5.1 D-BE shall perform all work required by the Contract Documents in a skillful, good, and workmanlike manner and in strict conformance with the Contract Documents. All materials and equipment furnished by D-BE shall be new and of good quality, unless otherwise required by the Contract Documents.

13.5.2 D-BE shall supervise and direct the work using its best skill and attention. All labor shall be performed by individuals, specially skilled, in the kind of work required. D-BE shall at all times enforce strict discipline and good order among its employees and those of its Subcontractors of any tier. D-BE shall not employ for the Project any unfit person or anyone not skilled in the assigned task or otherwise unfit. D-BE shall immediately remove from the Project any person that OWNER determines, in its sole discretion, is unfit or behaving in an unsatisfactory or unacceptable manner. Persons so removed shall not thereafter be reassigned to any portion of the Project without OWNER's written approval, which may be granted or withheld in OWNER's sole discretion.

13.5.3 D-BE shall, without charge, replace any material or correct any work found by OWNER not to conform to the requirements of the Contract Documents, unless OWNER consents to accept such material or work along with a commensurate reduction in the Contract Price. D-BE shall promptly segregate and remove rejected material from the work site.

13.5.4 If D-BE does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, OWNER may: (1) by contract or otherwise replace such material or correct such work and charge the cost thereof to D-BE, including but not limited to by deducting the cost from amounts due or to become due to D-BE; or (2) terminate D-BE's right to proceed in accordance with the "TERMINATION FOR CAUSE" Section of the General Conditions.

### **13.6 SURVEYING**

13.6.1 D-BE shall notify OWNER at least 7 days before starting work to allow for the preservation of survey monuments, lot stakes, and benchmarks. D-BE shall not disturb survey monuments, lot stakes, or benchmarks without the consent of OWNER, and shall bear the expense of replacing any that may be disturbed without such consent. Replacement shall be done only under the direction of OWNER by a Registered Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within the State. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, D-BE shall adjust the monument cover to the new grade within 7 days of finished paving unless otherwise instructed by OWNER. D-BE shall preserve construction survey stakes and marks for the duration of their usefulness and will bear the expense of any survey stakes that are lost or disturbed and need to be replaced.

13.6.2 D-BE shall notify OWNER in writing at least 7 days before survey services will be required in connection with the laying out of any portion of the work. D-BE shall dig all holes necessary for line and grade stakes. Unless otherwise specified in the Contract Documents, stakes will be set and stationed by OWNER for curbs, headers, sewers, storm drains, structures, and rough grade. A corresponding cut or fill to finished grade (or flowline) will be indicated on a grade sheet.

13.6.3 All work shall conform to the lines, elevations, and grades shown on the Plans. Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variation shall be reported to OWNER. In the absence of such report, D-BE shall be responsible for any error in the grade of the work. Grades for underground conduits will be set at the surface of the ground. D-BE shall transfer them to the bottom of the trench.

13.6.4 Surveying by D-BE shall conform to the quality and practice required by OWNER.

### **13.7 UTILITIES**

13.7.1 Location: D-BE shall determine the location and depth of all utilities, including service connections, which have been marked by the respective owners and which may affect or be affected by its operations. Unless otherwise specified in the Contract Documents, costs associated with complying with the requirements of this Section shall not entitle D-BE to additional compensation under the "CHANGES" Section of the General Conditions. Pursuant to Government Code Sections 4216 et seq., D-BE shall contact the appropriate regional notification center(s) and shall obtain an inquiry identification number at least 2 working days, but not more than 14 calendar days, prior to commencing any excavation.

13.7.2 Protection: D-BE shall not interrupt the service function or disturb the support of any utility without authority from the utility owner or direction from the OWNER. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities located as shown on the Plans or in the Special Provisions, D-BE shall furnish and place the necessary protection at its expense unless otherwise provided in the Contract Documents. Permanent improvements installed in proximity to any utilities shall be constructed in a manner that will not impair the physical integrity, use, or ongoing maintenance of those utilities.

13.7.3 Removal: Unless otherwise specified in the Contract Documents, D-BE shall remove all interfering portions of utilities represented in the Plans or Special Provisions as "abandoned" or "to be abandoned in place." Before starting removal operations, D-BE shall ascertain from OWNER whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the GMP Proposal for the items of work necessitating such removals.

13.7.4 Relocation: When feasible, the responsible utility owners will complete their necessary installations, relocations, repairs, or replacements before commencement of the work by D-BE. When the Plans or Special Provisions indicate that a utility installation is to be relocated, altered, or constructed by others, D-BE will conduct all negotiations with the owners and utility work will be done at no cost to the OWNER, except as otherwise specified in the Contract Documents. Utilities that are relocated in order to avoid interference shall be protected in their position and the cost of such protection shall be included in the GMP Proposal for the items of work necessitating such relocation. OWNER may order changes in the work to avoid interference as provided by the "CHANGES" Section of these General Conditions. When the Contract Documents provide for D-BE to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the GMP Proposal for the items of work necessitating such alteration, relocation, or reconstruction. Temporary or permanent relocation or alteration of utilities requested by D-BE for its convenience shall be its responsibility and D-BE shall make all arrangements and bear all costs.

13.7.5 Relocation of Service Connections: The D-BE shall arrange for the utility owners to relocate service connections as necessary within the limits of the work or within temporary construction or slope



easements. When directed by OWNER, D-BE shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. Unless, otherwise specified in the Contract Documents, payment for the relocation of such service connections shall be in accordance with the "CHANGES" Section of these General Conditions and will include the restoration of all existing improvements which may be affected thereby. D-BE may agree with the owner of any utility to disconnect and reconnect interfering service connections, and OWNER will not be involved in any such agreement.

13.7.6 Notice: D-BE shall notify OWNER of its schedule insofar as it affects the protection, removal, or relocation of utilities.

13.7.7 Cooperation: When necessary, D-BE shall so conduct its operations as to permit access to the work site and provide time for utility work to be accomplished during the progress of the work.

13.7.8 Utility Facilities on Project Site: If D-BE discovers unidentified utilities, D-BE shall immediately notify OWNER and the utility owner in writing. Pursuant to Government Code Section 4215, D-BE shall be compensated for the costs of locating and repairing damage not due to failure of D-BE to exercise reasonable care, and of removing or relocating main or trunk line utilities located on the site and not identified in the Contract Documents with reasonable accuracy. Such compensation shall also cover the cost of D-BE's equipment necessarily idled during such work. D-BE shall not be assessed Liquidated Damages for delay in completion of the work if such delay was caused by the failure of the utility owner to provide for removal or relocation of such utilities. This provision shall not be deemed to require compensation or excuse of Liquidated Damages when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meters, and junction boxes on or adjacent to the construction site.

13.7.9 Increase of Contract Time: D-BE shall not be entitled to additional time or compensation for delays attributable to utility relocations or alterations if such utility relocations or alterations are correctly located, noted, and completed. D-BE may be entitled to an extension of the Contract Time for unforeseen delays attributable to unreasonably protracted interference by utilities in performing work correctly represented in the Plans or Special Provisions. D-BE will assume responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities within the area affected by the work if such utilities are not identified in the Contract Documents.

### **13.8 SPACE AT SITE**

D-BE shall identify and acquire reasonable space at the work site and shall confine D-BE's operations to the assigned space.

### **13.9 OPERATING HOURS AND SITE ACCESS**

Unless otherwise specified in the Contract Documents, normal operating hours are from 7:00 A.M. to 7:00 P.M. (subject to City Approval). Work performed outside normal operating hours will require OWNER's written approval.

### **13.10 TRAFFIC CONTROL**

13.10.1 D-BE shall coordinate its traffic at the site with OWNER. When a Traffic Control Plan (TCP) is required by the Contract Documents, D-BE shall submit an acceptable plan to OWNER within 10 days after the Notice to Proceed is issued.

The Temporary Traffic Control Plan shall be prepared by a Traffic Engineer prior to any work performed and must be prepared according to requirements in the 2014 California Manual on Uniform Traffic Control Devices (CAMUTCD). The traffic control plan shall be signed and sealed (wet-stamped) by a

State of California registered Traffic Engineer. However, with a prior approval from the OWNER, a plan prepared, signed and sealed by a registered Civil Engineer may be acceptable.

The Design-Build Firm shall prepare plan sheets, notes, and details to include the following: typical section sheet(s), general notes and construction sequence sheet(s), typical detail sheet(s), traffic control plan sheet(s).

The Design-Build Firm shall prepare additional plan sheets such as detours, cross sections, profiles, drainage structures, temporary roadway lighting, retaining wall details, and sheet piling as necessary for proper construction and implementation of the Temporary Traffic Control Plan.

The TCP shall display and address, at a minimum:

- 13.10.1.1 Protection of existing improvements;
- 13.10.1.2 Maintaining access by OWNER operations;
- 13.10.1.3 Methods to eliminate interference with existing facility operations and traffic in and out of the facility and operations area;
- 13.10.1.4 Proposed haul routes for delivery of materials;
- 13.10.1.5 Maximum speeds for each class of vehicle on each type of terrain, but in no event to exceed 15 mph on shared access roads and any crossing areas;
- 13.10.1.6 Access to work areas; and
- 13.10.1.7 D-BE's and Subcontractors' staging and material storage areas, including fuel storage procedures.
- 13.10.1.8 All motor-driven equipment using fuel shall have spark arresters.

13.10.2 Traffic Control Restrictions: There will be no lane closures allowed between the hours of 4:00 P.M. to 7:00 A.M. A lane may only be closed during active work periods. There will be no pacing operations allowed between the hours of 4:00 P.M. to 7:00 A.M. There will be no detours allowed between the hours of 4:00 P.M. to 7:00 A.M. All lane closures, including ramp closures, must be reported to the local emergency agencies, the media and the OWNER public information officer. Also, the Design-Build Firm shall develop the Project to be able to provide for all lanes of traffic to be open in the event of an emergency.

13.10.3 Reckless driving shall not be tolerated, and all vehicles shall be operated at a safe speed at all times. If OWNER determines that D-BE has violated the Traffic Control Plan or otherwise operated in an unsafe manner, OWNER may suspend or prohibit the equipment operator(s) from any further work at the site. Repeated or severe incidents demonstrating the failure of D-BE to operate its vehicles safely shall constitute a material breach of this Contract and OWNER may terminate D-BE's right to proceed with the work pursuant to the "TERMINATION FOR CAUSE" Section of the General Conditions.

### **13.11 TEMPORARY OFFICE BUILDING AND TELEPHONE**

D-BE shall provide a temporary office building and telephone, if required for the Project. The temporary building shall be Class A and be provided by the D-BE in accordance with SSPWC Section 8 - Facilities for Agency Personnel. The trailer shall be located as shown in the Plans and/or as directed by OWNER.

### **13.12 TEMPORARY UTILITIES**

D-BE shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation.

### **13.13 SANITARY UNIT**

D-BE shall provide temporary toilets for D-BE's use. D-BE will maintain and service them in a sanitary condition through the construction of the Project.

### **13.14 WATER**

D-BE shall furnish all water needed for the Project, including but not limited to potable (drinking) and construction/dust suppression water, unless otherwise specified in these Contract Documents.

### **13.15 FIRE EXTINGUISHER**

D-BE shall provide fire extinguishers suitable for the Project and consistent with the factors enumerated in Title 19 of the California Code of Regulations, Section 565. These extinguishers shall be placed at strategic locations around the working area and kept accessible for use in case of fire. D-BE shall keep fire extinguishers in working order and shall remove them from the site at the end of construction.

### **13.16 STORAGE AND WORKING SPACE**

D-BE shall identify, acquire, obtain approval by OWNER, and specify on Contract Documents material storage and working space. Locations for D-BE to store D-BE's equipment will be agreed upon during the pre-construction meeting.

### **13.17 TRANSPORTATION AND HANDLING OF PRODUCTS**

D-BE shall:

- 13.17.1 Transport and handle products in accordance with manufacturer's instructions and applicable regulations;
- 13.17.2 Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged; and
- 13.17.3 Provide equipment and personnel to handle products by methods to prevent damage.

### **13.18 STORAGE AND PROTECTION OF PRODUCTS**

D-BE shall:

- 13.18.1 Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
- 13.18.2 Store sensitive products in weather-tight, climate-controlled enclosures;
- 13.18.3 Store hazardous materials in accordance with applicable regulations, including but not limited to those related to containment and protection of the materials and surrounding environment;
- 13.18.4 Store fabricated products on sloped supports above ground if such products are stored outdoors;
- 13.18.5 Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
- 13.18.6 Provide equipment and personnel to store products by methods to prevent damage;

13.18.7 Arrange storage of products to permit access for inspections; and

13.18.8 Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

### **13.19 REMOVAL OF TEMPORARY FACILITIES**

D-BE shall remove temporary toilets, storage sheds, and other facilities of a temporary nature from the Project site as soon as OWNER determines progress of the work permits. D-BE shall recondition and restore portions of the site occupied by temporary facilities to a condition acceptable to OWNER.

### **13.20 REGULATORY COMPLIANCE REQUIREMENTS**

#### **13.20.1 Permits**

13.20.1.1 D-BE shall identify and obtain all permits necessary for the Project, including: permits, licenses, and certifications, including but not limited to all trade-related permits; permits required for environmental protection; construction permits; encroachment permits; permits required for the operation and storage of any equipment or regulated hazardous materials brought onsite; and permits required for dispensing and storing petroleum-related products. If necessary for the Project, D-BE shall obtain and submit to OWNER a California Occupational Safety Health Agency (Cal-OSHA) Excavation Permit. D-BE shall be responsible for ensuring that all other permits necessary to complete the Project are in place consistent with federal, State, and local laws and regulations. Costs and fees associated with said permits, regardless of whether obtained by OWNER, D-BE, or any other entity, shall be borne solely by the D-BE. If OWNER incurs costs related to such permits, then OWNER shall deduct such costs from any funds due or to become due to D-BE.

13.20.1.2 D-BE shall comply with the regulations or requirements of all permits, licenses, certifications, and regulations governing the Project. Any act or omission by D-BE that causes either Party to be in violation of any permit, licenses, certification, or regulation shall be deemed a material breach of this Contract by D-BE. OWNER reserves the right to perform itself or through other D-BEs any work necessary to correct any violation or to bring the Project into compliance with any permit, license, certification, or regulation, and shall deduct the cost of such work from any funds due or to become due to D-BE.

13.20.1.3 D-BE shall maintain, at its job site office, copies of all permits, licenses, and certifications required for or governing the Project, including, as applicable, permits and approvals issued to OWNER by the State Water Resources Control Board; the South Coast Air Quality Management District (“SCAQMD”) for dust control; and the SCAQMD and Local Enforcement Agency for refuse excavation.

13.20.2 **D-BE Compliance with Applicable Law and Regulations:** D-BE shall comply with all federal, State, County, and local codes, ordinances, regulations, and standards applicable to the Project. D-BE shall comply with all current regulatory criteria and standards. D-BE shall not be entitled to any additional compensation for work necessary to comply with legal or regulatory requirements effective at the time of bid opening.

#### **13.20.3 Archaeological/Paleontological Resources**

OWNER may engage the services of an Archaeologist/Paleontologist (“A/P”) to monitor all or portions of the work.

13.20.3.1 The Contract Documents may require D-BE to retain an A/P. In such event, the following conditions apply:

13.20.3.1.1 A/P shall be acceptable to OWNER. A/P can be selected from OWNER's list available at [www.ocplanning.net/building/plan/forms](http://www.ocplanning.net/building/plan/forms) under the "Archaeologist and Paleontologist" section. Regardless of whether A/P is selected from OWNER's list, A/P shall meet all minimum qualifications listed in the "Qualifications for Certification of Archaeological and Paleontological Professionals" document provided at that website.

13.20.3.1.2 D-BE shall submit the qualifications and references of A/P to OWNER for verification at least 10 working days prior to any excavation or grading work. A/P shall be approved in writing by OWNER at least 5 working days prior to the start of any excavation or grading work.

13.20.3.1.3 Unless otherwise agreed to in writing by OWNER, A/P shall not be an employee of D-BE, any subcontractor currently under contract by D-BE (for any job), or any supplier to any project awarded or contracted to D-BE.

13.20.3.1.4 D-BE shall be compensated for all A/P expenses including all labor, materials, tools, equipment, and incidentals necessary for accomplishing the work in accordance with the Item(s) identified for A/P services in the GMP Proposal or, if not listed there, in accordance with the "CHANGES" Section of the General Conditions.

13.20.3.1.5 A/P shall report exclusively to OWNER. OWNER may terminate the services of A/P at any time and at OWNER's sole discretion, with no justification necessary to D-BE, and D-BE shall replace A/P with another individual or firm meeting the requirements of this Section. Under no circumstances will A/P's termination entitle D-BE to any additional time or payment under the "CHANGES" Section of these General Conditions.

13.20.3.1.6 All other provisions of this Section apply whether A/P is retained by OWNER or by D-BE, and D-BE shall ensure that A/P complies with the provisions of these Contract Documents pertaining to A/P services.

13.20.3.2 D-BE shall cooperate with all A/P personnel. If A/P directs D-BE to suspend or stop work in a particular area, D-BE shall abide by such request immediately and not resume work until directed by OWNER.

13.20.3.3 The A/P shall:

13.20.3.3.1 Conduct a literature and records search for recorded sites and previous surveys;

13.20.3.3.2 Conduct a field survey unless the entire work site has been previously surveyed, and the survey documentation is acceptable to OWNER;

13.20.3.3.3 Attend the pre-construction meeting to conduct or schedule separate pre-construction cultural and paleontological resources sensitivity training and attend additional meetings or provide training as determined necessary by OWNER. In the event of the discovery of specimens or artifacts, attend construction meetings until otherwise directed by OWNER;

13.20.3.3.4 Conduct pre-construction cultural and paleontological resources sensitivity training for all staff involved in moving soil or working near soil disturbance. Training shall review the types of archaeological and paleontological resources that might be found, along with laws for the protection of the resources;

13.20.3.3.5 If determined necessary by the A/P and approved by OWNER, the A/P shall prepare a report on a subsurface test level investigation of archaeological resources collection or pre-grade paleontological salvage operation. The report shall evaluate the site including the significance of any finds (location, depth, nature, condition, and extent of the artifacts or specimens),

recommended methodology of salvage or mitigation and related cost estimates, and an analysis and catalogue of artifacts or specimens;

- 13.20.3.3.6 Establish procedures for A/P sampling and resource surveillance and monitoring;
- 13.20.3.3.7 In cooperation with OWNER, establish procedures for suspension or redirection of work to permit sampling, identification, and evaluation of possible resources.
- 13.20.3.3.8 During grading, excavation, or other ground-disturbing activities, if any evidence of paleontological, pre-historic, or historic cultural resources is uncovered, the following measures, unless otherwise specified in regulatory permit language, shall be taken:
  - 13.20.3.3.8.1 All below grade work shall stop within a 100-foot radius of the discovery. Work shall not continue until the discovery has been evaluated by the A/P.
  - 13.20.3.3.8.2 The A/P shall assess the find(s) and determine if they are of value. If the find(s) are of value then:
    - 13.20.3.3.8.2.1 The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
    - 13.20.3.3.8.2.2 A/P shall prepare all potential finds in excavated material to the point of identification.
    - 13.20.3.3.8.2.3 Significant finds shall be preserved as determined necessary by the A/P.
    - 13.20.3.3.8.2.4 Excavated finds shall be offered to OWNER or its designee for curation on a first-refusal basis, then offered to a local museum or repository willing to accept the resource.
    - 13.20.3.3.8.2.5 Within 30 working days of completion of the end of earth moving activities, the A/P shall draft a report summarizing the finds, and shall include the inspection period, an analysis of any resources found, and the present repository of the items.
    - 13.20.3.3.8.2.6 All resulting reports shall be delivered to OWNER and filed with the South-Central Coastal Information Center at the California State University, Fullerton, or another institution if directed by OWNER.
- 13.20.3.4 If D-BE uncovers any burial grounds or remains, ceremonial objects, petroglyphs, or archaeological, paleontological, or other artifacts or specimens of like nature within the construction area, D-BE shall immediately notify the OWNER's onsite representative of D-BE's finds and shall modify the construction operations so as not to disturb the finds pending further instructions from OWNER.
- 13.20.3.5 Discovery of human remains:
  - 13.20.3.5.1 In accordance with Section 7050.5 of the California Health and Safety Code, if human remains are found, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the OWNER of Orange Sheriff-Coroner and/or other applicable coroner and law enforcement agency ("Coroner's Office") has determined the appropriate treatment and disposition of the human remains. The Coroner's Office shall be notified within 24 hours of the discovery.
  - 13.20.3.5.2 If the Coroner's Office determines that the remains are or are believed to be of Native American origin, the Coroner's Office will notify the California Native American Heritage Commission (NAHC).

13.20.3.5.3 In accordance with Section 5097.98 of the California Public Resources Code, the NAHC must notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall be granted access to the site to complete their inspection as quickly as possible. The designated Native American representative would then determine, in consultation with OWNER, the treatment and disposition of the human remains.

13.20.3.6 Should the finds, or notification of finds, result in delays or extra work, payment will be allowed in accordance with the "Changed Conditions" subsection of the "CONDITIONS AFFECTING THE WORK" Section of these General Conditions. However, D-BE shall not be entitled to damages, additional payments, or extensions of time where the D-BE could have avoided delays by any reasonable means.

13.20.3.7 Unless otherwise required by law, any and all finds shall remain the property of OWNER and not become the property of any other person or entity.

13.20.4 Surface Water Protection

13.20.4.1 Work at is subject to the requirements of the National Pollutant Discharge Elimination System ("NPDES") storm water regulations, specifically to Construction General Permit ("CGP") Order No. 2012-0006-DWQ as indicated in the Special Provisions. NPDES regulations require the implementation of an IGP Stormwater Pollution Prevention Plan ("IGP SWPPP") and may additionally require a CGP Stormwater Pollution Prevention Plan ("CGP SWPPP") in conjunction with work at such sites.

13.20.4.2 Where the nature and location of the work require compliance with the CGP, D-BE is responsible for preparing and implementing a CGP SWPPP. Copies of the CGP and related documents may be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml).

13.20.4.3 Additionally, in a letter dated August 31, 2011, the Santa Ana Regional Water Quality Control Board issued a Water Quality Standards Certification pursuant to the federal Clean Water Act ("CWA") (also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.), Section 401. The Certification requires that discharge from the Project will comply with CWA Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). The discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that Have Received Water Quality Certification."

13.20.5 Preparation of CGP SWPPP

13.20.5.1 Where the nature and location of the work requires D-BE to comply with the CGP, D-BE shall develop a CGP SWPPP in accordance with the CGP and include references to the California Stormwater Quality Association ("CASQA") Stormwater Best Management Practices ("BMPs") Handbook for BMPs to be implemented during the course of construction. By submitting its GMP Proposal, D-BE represents having read and understood the requirements of the CGP. Although D-BE is required to prepare and submit a SWPPP, D-BE will not be required to prepare and submit Permit Registration Documents (PRDs) for the Project site. Additionally, D-BE will not be required to submit any CGP-required documentation to SMARTS. D-BE shall submit to OWNER all CGP-required documentation (e.g., inspection reports, rain event action plans, monitoring reports, annual reports, site photos, and SWPPP amendments) and D-BE may not proceed with any earth-disturbing work

prior to OWNER's approval of the CGP SWPPP, which approval will not be unreasonably delayed.

13.20.5.2 As applicable, D-BE shall employ a Qualified SWPPP Developer ("QSD") to prepare the CGP SWPPP, which shall include D-BE's specific approach for the Project to ensure compliance with the CGP. D-BE's final CGP SWPPP shall include a site-specific Construction Site Monitoring Program ("CSMP"). The CSMP shall define and identify the locations of specific BMPs to be implemented by D-BE during the various phases and staging of construction (including but not limited to: installation and maintenance of interim erosion or sediment controls, whereas the Erosion Control Plan may reflect only the post-construction location of these BMPs; equipment staging area BMPs; and interim stockpile management). The CGP SWPPP shall demonstrate compliance with all requirements of the CGP throughout the duration of the project.

13.20.5.3 D-BE shall submit to OWNER one digital copy of the draft and final CGP SWPPP and a minimum of three hard copies for the draft and final, each placed in a three-ring binder with separators and tabs. Review and acceptance by OWNER is for general compliance purposes only and shall not be construed by any party as relieving D-BE from any responsibility or liability for conforming to the requirements of the CGP. OWNER may require that the CGP SWPPP be amended and resubmitted to OWNER as it determines necessary.

13.20.5.4 All costs associated with D-BE's review of the CGP and preparation of the CGP SWPPP and the CSMP shall be included in D-BE's GMP Proposal.

#### 13.20.6 SWPPP Implementation & Compliance

13.20.6.1 D-BE is responsible for implementing and complying with the IGP SWPPP and/or CGP SWPPP, as applicable to the nature and location of the work. D-BE's implementation and compliance activities shall include but not be limited to: installation and maintenance of BMPs (interim and final); preparation and implementation of Rain Event Action Plans (REAPS); rainfall and storm water turbidity and pH monitoring, sampling and analysis as required by the CGP; sampling and analysis to include constituents in the IGP in the event of any breach, malfunction, leakage, or spill; sampling and analysis for constituents in condition 9.c of the existing Monitoring and Reporting Program (RWQCB Order No. R8-2010-0017) in the event of groundwater containment system breach, malfunction, leakage, or spill; daily, weekly, and quarterly inspections and reporting; and all other activities required to eliminate both storm water and non-storm water discharges as required by the IGP/CGP. D-BE shall designate an independent Qualified SWPPP Practitioner (QSP), as defined by the IGP/CGP, who will be responsible for monitoring D-BE's compliance with IGP/CGP requirements on the Project at all times.

13.20.6.2 D-BE shall be responsible for providing all reports required by the IGP/CGP (monitoring, inspection, REAP, annual reports, etc.) to the OWNER for review. D-BE shall submit all reports digitally with at least three hard copies to the OWNER.

13.20.6.3 D-BE's designated QSP shall review and make recommendations to the OWNER to amend the appropriate SWPPP as needed during the course of work to reflect actual construction progress and construction practices.

13.20.6.4 D-BE shall comply with all the requirements identified in the IGP/CGP. Non-adherence with the requirements identified in the IGP/CGP may constitute a violation of the



Clean Water Act and the Porter-Cologne Water Quality Control Act and may be grounds for enforcement action by the RWQCB. Any fines incurred by OWNER due to D-BE's noncompliance with the requirements of the IGP/CGP shall be back-charged by OWNER to D-BE.

13.20.6.5 D-BE's compliance with IGP/CGP includes, but is not limited to:

13.20.6.5.1 Developing a SWPPP to conform to a Risk Level 2 and D-BE's actual construction practices;

13.20.6.5.2 Tasks to be performed by QSP, including administering, implementing, maintaining, and ensuring adequate functioning of the various water quality control measures identified within the applicable SWPPP during construction including all Numeric Action Level (NAL) and Numeric Effluent Limitation (NEL) sampling, monitoring, and reporting requirements statutorily required for the determined Risk Level of the Project site;

13.20.6.5.3 Providing and maintaining all documentation (at the work site) and administration for the entire Contract period;

13.20.6.5.4 Performing all work required for compliance with the requirements of the IGP/CGP including preparation of all REAPs, and constructing effective treatment control BMPs, i.e.: contingency basins, chemical treatments, etc. (if applicable); and

13.20.6.5.5 Providing all labor, tools, equipment, materials, and incidentals for any additional BMPs not shown or identified in the applicable SWPPP which may be required to comply with the requirements of the IGP/CGP or when requested by the OWNER.

13.20.6.6 D-BE shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of D-BE's failure to comply with those provisions of the applicable SWPPP within D-BE's control. D-BE shall be responsible for ensuring that its Subcontractor(s) comply with the provisions of this Section. D-BE shall be liable for any action, fine, or civil liability imposed by the regulatory agencies for incidents of noncompliance that are within D-BE's area of responsibility.

## **13.21 HAZARDOUS OR CONTAMINATED MATERIALS**

13.21.1 D-BE is responsible for proper handling, storage, transportation, and disposal (per all federal, State and local regulations) of any hazardous wastes, liquid wastes, or nuisance wastes (for example, finely divided, powdery, or dusty materials, strong odors, etc.) that it generates while working on OWNER's behalf.

13.21.2 As provided by the "CONTRACT TIME" Section of the Agreement, D-BE must submit for OWNER's review an Emergency/Contingency Plan for handling spills of hazardous, liquid, or nuisance materials while working on OWNER's behalf. The Plan shall include proper handling, removal, and disposal of these materials per all applicable federal and State requirements. The Emergency/Contingency Plan shall also include emergency notification to OWNER and any other notifications as required by law. D-BE shall not commence work at the site until OWNER has approved D-BE's Emergency/Contingency Plan.

13.21.3 D-BE must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of OWNER.

13.21.4 D-BE shall remove and dispose of any materials that become contaminated directly or indirectly as a result of the D-BE's operations, whether or not such contamination involves hazardous materials. The removal and disposal of any contaminated materials associated with this Contract shall be completed by the D-BE to the satisfaction of OWNER at no additional cost to the OWNER. D-BE shall execute all necessary manifests, bills of lading, or similar documents ("Manifests") concerning such contaminated materials which shall identify D-BE as the generator of the materials.

13.21.5 Prior to shipment, D-BE shall provide copies of all Manifests to the OWNER to verify that D-BE has arranged for the proper disposal of hazardous materials to a licensed, permitted facility. D-BE shall provide to OWNER proof of proper disposal of such materials. If Manifests and proof of proper disposal are not submitted, OWNER may withhold or deduct directly the estimated cost of removal and disposal from amounts otherwise due D-BE, plus a 5% administration fee, until D-BE submits Manifests and proof of disposal.

13.21.6 OWNER has the authority to perform inspections of the D-BE's work area at any time to ensure D-BE is compliant with all applicable regulations.

13.21.7 Upon written notice from OWNER, if D-BE does not remove contaminated materials immediately, OWNER may remove, process, transport, and certify the material as stated above and all costs incurred by OWNER for removal and disposal, plus a 5% administrative fee, will be deducted directly from amounts otherwise due D-BE. If OWNER performs such decontamination, D-BE shall sign any Manifests for that material as the generator.

13.21.8 D-BE shall train its employees, as required by OSHA and California Code of Regulations Title 8, in the proper handling, storage, transportation and disposal of hazardous materials. D-BE shall train its employees to follow the Emergency/Contingency Plan and know immediate response procedures should a release occur.

13.21.9 D-BE shall keep appropriate emergency response equipment and materials available in the working area at all times.

13.21.10 Maintenance Facilities and Work Area: D-BE shall maintain its equipment in an area identified, acquired, and specified in Contract Documents by the D-BE and approved by OWNER for such purposes. Certain maintenance areas have been designated at the OWNER facility for the purpose of maintaining OWNER equipment. D-BE may utilize an OWNER maintenance area only with the express permission of the OWNER. OWNER may designate a different maintenance area for D-BE's use at any time, and D-BE will not be entitled to a Change Order as the result of such relocation.

13.21.11 D-BE's maintenance activities shall conform to the provisions of the "REGULATORY COMPLIANCE REQUIREMENTS" Section of the General Conditions. D-BE shall keep the facility clean, maintain clean equipment, and dispose of any contaminated materials in accordance with the "HAZARDOUS OR CONTAMINATED MATERIALS" Section, above. D-BE shall store all maintenance materials in accordance with the "D-BE'S STORAGE AND PROTECTION OF PRODUCTS" Section.

13.21.12 D-BE shall be responsible for any damage it causes to the designated area and for restoring the area to its original condition when D-BE ceases using the area. D-BE shall repair any damage and perform such restoration. If D-BE fails to perform such repair or restoration in a timely manner, OWNER may perform that work and D-BE shall reimburse OWNER for repair or restoration costs plus a 5% administrative fee.

### **13.22 FUGITIVE DUST EMISSION CONTROL**

D-BE shall comply with SCAQMD Rule 403 including, if applicable, to prepare and submit to OWNER and for acceptance by SCAQMD a Fugitive Dust Emission Control Plan, as required for Project work. D-BE shall also notify OWNER of any condition that could lead to noncompliance with the permit Rule 403 requirements. If a Fugitive Dust Emissions Control Plan is required pursuant to Rule 403, D-BE may not conduct any activities governed by SCAQMD Rule 403 until OWNER has accepted D-BE's Plan and the Plan is accepted by SCAQMD. If D-BE fails or refuses to immediately correct any noncompliance with the provisions of this Section, OWNER may terminate D-BE's right to proceed with the work and OWNER may exercise its rights under the "TERMINATION FOR CAUSE" Section of these General Conditions.

Whether or not D-BE's right to proceed with the work is terminated, D-BE and the D-BE's sureties shall be liable for any damage to the OWNER resulting from D-BE's refusal or failure to complete the work within the specified time.

D-BE shall not be entitled to any time extensions or compensation for any cost due to any such action as a result of D-BE's failure to comply with the provisions of the accepted Fugitive Dust Emission Control Plan. D-BE shall be responsible for ensuring that all Subcontractor(s) comply with the provisions of this Section. D-BE shall be liable for any action or fine imposed by the SCAQMD on those incidents of noncompliance that are within the D-BE's area of responsibility.

### **13.23 BIOLOGICAL AND HABITAT PROTECTION**

OWNER will inform D-BE of any biological resources that would or could be impacted by the Project and specify any required mitigation measures or procedures to protect those resources during construction. D-BE shall be responsible for complying with these protection measures, and for ensuring that all Subcontractors also comply. OWNER has the authority to perform inspections of D-BE's work area at any time to ensure that these measures or procedures are being followed.

### **13.24 RED IMPORTED FIRE ANT INTERIOR QUARANTINE OF ORANGE COUNTY**

D-BE shall be responsible for strict compliance with the quarantine of the County of Orange for the red imported fire ant ("RIFA") as defined in California Code of Regulations, Title 3, Section 3432 and incorporated herein by reference. D-BE shall arrange for any California Department of Food and Agriculture inspections, certifications, or approvals necessary to perform any portion of the Project. A copy of the form used to request such inspections is available from OC Planning. D-BE shall bear the full financial responsibility of any assessed fine or penalty resulting from D-BE's violation of any law, regulation, or permit related to RIFA control. D-BE shall submit to OWNER for OWNER's approval an acceptable detailed incident report within 5 working days of the date of any violation or not later than 5 working days from the date of the notification of the violation, whichever is later.

### **13.25 COMPLIANCE WITH "PERFORMANCE" SECTION**

D-BE shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of the D-BE's failure to comply with the requirements of this "PERFORMANCE" Section. D-BE shall be responsible for ensuring that the D-BE's Subcontractor(s) comply with the provisions of this Section. D-BE shall be liable for any fine or penalty imposed by any regulatory agency or for any other cost incurred by OWNER as a result of regulatory noncompliance arising from any action or inaction of D-BE or its Subcontractor(s).

## **14 CHANGES**

### **14.1 OMITTED**

### **14.2 CHANGE ORDERS**

OWNER may, at any time, by written order, and without notice to the sureties, request changes to the Contract Documents if within the general scope of the Project.

**14.2.1 OWNER's Change Order Requests:** OWNER shall issue a written request ("Change Order Request") which shall set forth in reasonable detail the nature of the change and the type of quote requested (lump sum or time-and-materials with a not-to-exceed amount) and whether such change involves additions, deletions, or other revisions to the Contract Documents. Within 7 days of receiving OWNER's Change Order Request, D-BE shall present to OWNER a detailed proposal for change in Contract Price and/or a change in the Contract Time from that set forth in the Agreement. If such change causes an increase or decrease in D-BE's cost or the time required for performance of the work, an equitable adjustment shall be made, and the Contract Price and/or Contract Time modified in writing accordingly by a Change Order.

**14.2.2 D-BE's Request for Change:** If D-BE believes that a change in the Contract Documents, including any change in Contract Price or Contract Time, is appropriate, it shall submit, within 7 days of the event giving rise to the proposed change, a written request ("Request for Change") to OWNER to issue a Change Order. Timely notice to OWNER is essential to OWNER's identification, prioritization, and response to claimed changes, including any claimed delays, and D-BE's failure to give OWNER timely notice of such claims shall be presumed to be prejudicial to OWNER. D-BE's failure to submit a notice to OWNER within 7 days after the date D-BE first recognized or should have recognized in the exercise of ordinary care, any event giving rise to any proposed change shall constitute a waiver by D-BE of any request for or entitlement to an increase in the Contract Price or Contract Time.

D-BE's Request for Change shall include a description of the proposed change in the Contract Documents, the event or circumstance giving rise to the need for the change, and any proposed change in the Contract Price and/or Contract Time associated with the Request for Change. If the Request for Change includes a proposal to increase the Contract Time, D-BE shall include a description of: (1) the cause(s) for the proposed extension of time, including but not limited to causal events and responsible persons and organizations; (2) the dates (or anticipated dates) of performance of the changed work; (3) activities on the Accepted Project Schedule affected by the change, any new activities created by the change, and their relationship with existing activities; (4) the anticipated extent of any claimed increase to the Contract Time; and (5) recommended action to avoid or minimize the increase. If OWNER agrees that a change in the Contract Documents is appropriate, OWNER may use the same options described in the "Lump Sum Change Orders" and "Time-and-Materials Change Orders" Sections below in response to D-BE's Request for Change. D-BE waives all claims as to which it has not provided OWNER with notice through a Request for Change in accordance with this Section. In the event of a claim or litigation arising from any disagreement involving D-BE's Request for Change, D-BE's compensation (if any) shall be limited to an amount calculated in accordance with the "Time-and-Materials Change Orders" Section below.

**14.2.3 Lump Sum Change Orders:** For a lump sum change, D-BE's quote shall be itemized and supported with sufficient substantiating data (including but not limited to detailed subcontractor estimates, supplier quote sheets, prices, invoices, and rate sheets) to permit evaluation with respect to the following costs:

14.2.3.1 Labor (show hourly rate multiplied by estimated hours);

14.2.3.2 Payroll taxes on labor;

- 14.2.3.3 Materials, supplies, and equipment (include unit costs and estimated quantities);
- 14.2.3.4 Machinery and equipment rental (include rental rates and estimated durations);
- 14.2.3.5 Sales, use, or similar taxes related to the work;
- 14.2.3.6 Other Items: OWNER may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from D-BE or any of its subcontractors;
- 14.2.3.7 Reasonable overhead and profit associated with the change, not to exceed 15% on above items if D-BE uses its own forces to perform changed work. If D-BE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items and D-BE shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. OWNER will pay only one overhead and profit markup of 6% for D-BE and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work; and
- 14.2.3.8 Premiums for all bonds and insurance (the maximum amount for this shall be 3% of above items and D-BE shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change).

OWNER may reject D-BE's lump sum proposal, may negotiate with D-BE a revision of the requested change and associated lump sum proposal, or may approve the D-BE's lump sum proposal and incorporate it into a Change Order.

14.2.4 Time-and-Materials Change Orders: For a time-and-materials change, OWNER shall determine the adjustment to the Contract Price on the basis of actual costs as follows:

14.2.4.1 Cost of materials and supplies (show actual unit cost multiplied by actual quantity). The cost of materials shall be at invoice price or the lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus freight and delivery. OWNER reserves the right to approve materials and sources of supply or to supply materials to D-BE if necessary for the progress of the work. No markup for overhead and profit shall be applied to any material provided by OWNER.

14.2.4.2 Tool and equipment rental. OWNER will not pay for the use of tools that individually have a replacement value of \$200 or less. Regardless of ownership, the equipment rental rates shall be based upon the edition of equipment rental rates published by the Caltrans Division of Construction, or locally available rate or other reference acceptable to OWNER current as of the date the changed work is performed. The rental rates paid shall include the cost of fuel, oil lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidents. Necessary loading and transportation costs for equipment used on the changed work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to OWNER than holding it at the work site, it shall be returned, unless D-BE elects to keep it at the work site at no expense to OWNER. All equipment shall be acceptable to OWNER, in good working condition, and suitable for the purpose for which it is to be used. Manufacturers' ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The reported rental time for equipment already at the work site shall be the duration of its use on the changed work, commencing at the time it is first put into actual operation on the changed work, plus the time required to move it from its previous site and back or to a closer site. D-BE shall submit

invoices for tool and equipment rental costs. If D-BE does not submit invoices, OWNER may establish the rental costs at the lowest price which was current at the time the changed work was performed.

14.2.4.3 Cost of labor (show actual total hourly rate multiplied by actual hours spent on changed work). The costs of labor shall not exceed the wages prevailing for each craft or type of workers performing the changed work at the time the changed work is done. The costs of labor shall include the actual basic hourly rate, plus employer's actual regular payments for health and welfare, pension, vacation or holiday, training, and other direct costs resulting from federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements and shall be supported by payroll records. The costs of labor shall not include any amount for bonuses or extraordinary vacation or holidays. The use of a labor classification that would increase the changed work cost will not be permitted unless D-BE establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportional to all of their assigned work and only that applicable to changed work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup for overhead and profit below.

14.2.4.4 Sales taxes on materials (percentage of item (a), above).

14.2.4.5 Payroll tax on labor (percentage of item (c), above).

14.2.4.6 Insurance (workers' compensation and liability insurance).

14.2.4.7 Other Items. OWNER may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from D-BE or any of its subcontractors. D-BE shall submit invoices covering all such items in detail.

14.2.4.8 Overhead and profit. D-BE shall receive a maximum 5.5% for overhead and 6.5% for profit on above items if D-BE uses its own forces to perform changed work. If D-BE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 12% on above items for its overhead and profit and D-BE shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. OWNER will pay only one overhead and profit markup of 6% for D-BE and one markup of 12% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. OWNER will not pay any overhead or profit for omitted work.

14.2.4.9 Bond (1% of above items).

D-BE shall keep and present, in such form as OWNER may prescribe, an itemized accounting of the costs or savings attributable to the changed work, together with appropriate supporting data. The accounting shall include a daily job record in quadruplicate containing a detailed description of: the labor (workers, classifications, and hours worked); quantities of materials used; equipment used (identifying the equipment and the hours of use); and any other services and expenditures in such detail as OWNER may require. Upon being signed and agreed to by OWNER and D-BE at the end of each day's performance, the daily job record will become the basis for payment for the changed work. But such agreement shall not preclude the OWNER from thereafter conducting an audit and adjusting the basis for payment. Failure by D-BE to submit the daily report by the close of the next working day may constitute a waiver of any rights for that day. Upon request by OWNER, D-BE shall permit OWNER to inspect D-BE's original estimate for the Project, subcontract agreements, or purchase orders relating to the change. Upon completion of the changed work ordered to be performed on a time and materials basis, OWNER will then issue a unilateral

Change Order adjusting the Contract Price according to the actual costs incurred and, if appropriate, adjusting the Contract Time.

14.2.5 Unilateral Change Orders: If OWNER and D-BE cannot reach an agreement on a proposed change, OWNER may issue a Unilateral Change Order directing work on a time-and-materials basis as set forth above.

14.2.6 No Extension of Contract Time without Critical Path Delay: D-BE shall not be entitled to an extension of the Contract Time unless D-BE demonstrates a delay to the critical path shown on the most recent Accepted Project Schedule.

14.2.7 No Additional Compensation for Early Completion: Nothing contained in the Contract Documents creates any contractual right, express or implied, on the part of D-BE to early completion of the Project. Under no circumstances shall OWNER owe additional compensation to D-BE for D-BE's inability to achieve completion of the Project before the expiration of the Contract Time, whether or not such inability is caused by the acts or omissions of OWNER or any other party for which OWNER is responsible, regardless of any approval by OWNER of the Accepted Project Schedule.

14.2.8 Credits: Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order: (1) if the net value of a change to the work results in a credit from D-BE, then the credit given shall include costs as well as overhead and profit; or (2) if the net value of a change to the work results in additional costs, then overhead and profit will only be applied to the amount by which the added costs of the change exceed the credited amount. When a change proposed by OWNER results in the deletion of work and the OWNER and D-BE are unable to agree upon the cost, overhead, and profit thereof, the OWNER's estimate of the cost, overhead, and profit shall be deducted from the Contract Price by a Change Order unless within 15 days of receiving the OWNER's estimate D-BE presents proof that the OWNER's estimate is in error.

14.2.9 Overhead and Profit: D-BE shall receive a maximum 5.5% for overhead and 6.5% for profit on above items if D-BE uses its own forces to perform changed work. If D-BE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 12% on above items for its overhead and profit and D-BE shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. OWNER will pay only one overhead and profit markup of 6% for D-BE and one markup of 12% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. OWNER will not pay any overhead or profit for omitted work.

Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order, the amount OWNER pays for overhead and profit shall be D-BE's only compensation for: all costs of supervision, superintendence, and scheduling; wages of timekeepers, watchmen, and clerks; tools individually valued at \$200 or less; incidentals; any and all field and home office expenses; costs of estimating and preparing change orders; all impact costs including but not limited to lost productivity associated with "learning curves," "productivity factors," and "ripple effects"; and all other expenses not included in itemized costs.

14.2.10 Compensation for Delay: D-BE shall be compensated for its substantiated actual, direct expenses, together with the markup for overhead and profit described in "Overhead and Profit" above, resulting from delay for which OWNER is responsible. Under no circumstances shall OWNER compensate D-BE for extended home office overhead or profit based on an "Eichleay formula" or any other proportionate allocation of D-BE's overhead expenses or profit, all of which shall be deemed to have already been included in the above-described markup.

14.2.11 Unit Price Changes: If a change is ordered in an item of work covered by a Contract Unit Price, and such change does not involve substantial change in character of the work from that shown on the Plans

or Special Provisions, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price. If the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions varies from the GMP Proposal quantity by 25% or less, payment will be made at the Contract Unit Price. If the actual quantity of the item of work varies from the GMP Proposal quantity by more than 25%, then payment will be made as described in Subsection (a) "Increases of More than 25%," or Subsection (b) "Decreases of More than 25%," below, as appropriate. If a change is ordered in an item of work covered by a Contract Unit Price, and such change involves a substantial change in the character of the work from that shown on the Plans or Special Provisions, an adjustment in payment will be made as described in Subsection (c) "Substantial Change in Character of the Work," below.

14.2.11.1 Increases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions exceed the GMP Proposal quantity by more than 25%, then payment for the quantity in excess of 125% of the GMP Proposal quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the D-BE and OWNER or, at the option of OWNER, on the basis of Time and Materials Change Orders, described above. However, in no event will payment be more than would be paid for the actual quantity at the Contract Unit Price.

14.2.11.2 Decreases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Special Provisions, be less than 75% of the GMP Proposal quantity, then an adjustment in payment will not be made unless D-BE requests an adjustment in writing and adequately demonstrates that the reduction in quantity has increased D-BE's per-unit cost of performing the work item. If D-BE so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by D-BE and OWNER, or at the option of OWNER, on the basis of Time and Materials Change Orders, described above. However, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be paid for 75% of the GMP Proposal quantity at the Contract Unit Price.

14.2.11.3 Substantial Change in Character of Work: If a change in an item of work covered by a Contract Unit Price involves a substantial change in the character of work from that shown on the Plans or Special Provisions, then an adjustment to the payment for the Work may be made by mutual agreement of D-BE and OWNER as an adjustment to the Contract Unit Price, as a Lump Sum Change Order, or at OWNER's option as a Time and Materials Change Order, as described above.

### **14.3 DELAYS DUE TO WEATHER AND FORCE MAJEURE**

14.3.1 Subject to the other provisions of these Contract Documents, D-BE may be entitled to an extension of the Contract Time, but no damages or increase in the Contract Price, for delays arising from the following causes when they occur beyond D-BE's or its Subcontractors' control, fault, or negligence:

14.3.1.1 Acts of God (tornadoes, fires, hurricanes, blizzards, earthquakes, typhoons, or floods), war, civil unrest, trade embargoes, labor disputes, or strikes necessitating stoppage of work; or

14.3.1.2 Weather days necessitating stoppage of work in excess of the number of anticipated weather days specified in the "CONTRACT TIME" Section of the Agreement. The Contract Time shall be deemed to take into account the number of working days specified in the Agreement ("anticipated weather days") that stoppage of work can reasonably be expected at the



Project site due to rain or other adverse weather conditions, and D-BE agrees that the number of weather days indicated in the Agreement is a reasonable approximation of the number of weather days that may impact the work. D-BE's construction schedule shall include this number of anticipated weather days. Time extensions for weather days will only be considered when the number of days in question exceeds the number of days specified in the Agreement, those days impact a critical path element of the Project, and D-BE cannot redirect work efforts to unaffected portions of the Project. If D-BE believes that the progress of the work has been adversely affected by weather, D-BE shall submit a written request for extension of time to OWNER.

14.3.2 A written request for any extension of the Contract Time shall be delivered to OWNER within 7 days of the first date of commencement of each delay. D-BE's failure to submit such request within the time specified will be considered grounds for refusal by OWNER to consider such request.

14.3.3 If the Project involves the construction of a permanent structure, no extensions of time will be made for weather after the principal portions of the work are enclosed. OWNER shall determine when the structure is "enclosed" for purposes of this provision.

14.3.4 Extensions of time due to weather or force majeure, when granted, will be on the basis of 1.4 calendar days credit for every working day lost, with the credit for each separate extension rounded off to the nearest whole calendar day. A "working day lost" will not include any day during which at least 60% of the normally scheduled workforce is able to work for at least five hours of the day.

14.3.5 D-BE shall not be entitled to any extension under this Section if the unforeseen circumstances occur beyond the Contract Time.

#### **14.4 CONDITIONS AFFECTING THE WORK**

14.4.1 Existing Site Conditions: Information regarding the work site represented in the Plans and Special Provisions prepared by the D-BE is believed to be correct, and unless expressly stated in the Contract Documents, OWNER does not warrant either the completeness or accuracy of such information. D-BE shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions that can affect the work or the cost thereof. Any failure by D-BE to do so will not relieve D-BE from responsibility for successfully performing the work without additional expense to OWNER.

14.4.2 Site Investigation and Representation: D-BE acknowledges satisfaction as to the nature and location of the work; the general and local conditions, particularly those bearing upon availability of transportation and access to the site; disposal, handling and storage of materials; availability of labor, water, electric power, telephone, and roads; uncertainties of weather or physical conditions at the site; the conditions of the ground; the character of equipment and facilities needed prior to and during the performance of the work; and all matters that can in any way affect the work or the cost thereof under this Contract.

D-BE further acknowledges satisfaction as to character, quality, and quantity of surface and subsurface materials to be encountered from D-BE's inspection of the site and pre-construction exploratory work by D-BE included in the Contract Documents. Failure by D-BE to become acquainted with the physical conditions of the site and all the available information will not relieve D-BE from responsibility for properly estimating the difficulty or cost of successfully performing the work.

D-BE warrants that as a result of examination and investigation of all the above-described data, D-BE can perform the work in a good and workmanlike manner and to the satisfaction of OWNER. OWNER assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of the Contract unless: (1) such representations are expressly stated in the Contract

Documents; and (2) the Contract Documents expressly provides that the responsibility therefore is assumed by OWNER.

14.4.2.1 Subsurface Investigation: When test holes, if any, have been excavated to indicate subsurface materials at particular locations, OWNER assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings made, or of the log of test borings, or of other investigations, or of the interpretations made thereof, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur. A log of test borings, if any, showing a record of the data obtained on subsurface conditions may be examined upon request. D-BE may make arrangements with OWNER for permission to conduct such additional subsurface investigation as may be necessary to verify existing conditions. D-BE shall examine the site and may make arrangements with OWNER to conduct D-BE's own additional subsurface investigation.

14.4.3 Changed Conditions: D-BE shall promptly, but in no event more than 7 days after the condition is first observed, notify OWNER in writing of the following site conditions ("Changed Conditions") and shall leave such conditions undisturbed until otherwise directed by OWNER:

14.4.3.1 Subsurface or latent physical conditions at the site differing materially from those investigated by D-BE during pre-construction and as such represented in the Contract Documents;

14.4.3.2 Unknown physical conditions at the site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract; and

Upon written notice of Changed Conditions from D-BE, OWNER shall promptly investigate such conditions. If OWNER finds that such conditions do materially differ and cause an increase or decrease in the cost of or the time for performance of the work, OWNER may, at its discretion: (a) terminate all or part of the Contract in accordance with "TERMINATION FOR CONVENIENCE OF OWNER" Section of these General Conditions; (b) issue a written change to the Contract in accordance with the "CHANGES" Section of these General Conditions; or (c) make any other appropriate arrangements to address the Changed Conditions. Any claim by D-BE for adjustment hereunder shall not be allowed unless D-BE has given proper notice.

In the event that a dispute arises between the Parties as to whether the conditions constitute Changed Conditions or affect the price or time for performance of any part of the work: (i) D-BE shall submit a written notice of potential claim to OWNER; (ii) D-BE shall then proceed with all work to be performed under the Contract; and (iii) D-BE shall not be excused from any scheduled completion date provided for by the Contract. D-BE shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between the Parties.

## **14.5 PROSECUTION OF CHANGED WORK**

D-BE shall promptly proceed with the work described in a Change Order. Nothing provided in this "CHANGES" Section shall excuse the D-BE from proceeding with the prosecution of the work as changed.

## **14.6 DIRECTOR'S AUTHORITY**

The Director is authorized by OWNER's Board of Supervisors to order changes or additions in the work where the cost of such change does not exceed the limits specified in Public Contract Code Section 20142. Only the Board of Supervisors may approve changes greater than those limits.

## **14.7 MINOR CHANGES IN THE WORK**

OWNER shall have authority to order minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on D-BE. D-BE shall carry out such written orders promptly.

## **15 TERMINATION**

### **15.1 TERMINATION FOR CONVENIENCE OF OWNER**

Notwithstanding any other provision of the Contract, OWNER may at any time and without cause terminate the Contract, in whole or in part, upon not less than 30 days written notice to the D-BE. Such termination shall be affected by delivery of a Notice of Termination to D-BE 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. D-BE 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 OWNER. OWNER shall pay D-BE for the work completed and accepted by OWNER prior to the effective date of the termination, and such payment shall be D-BE's sole remedy. Under no circumstances will D-BE 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. D-BE 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.

### **15.2 TERMINATION FOR CAUSE**

15.2.1 If D-BE fails to carry out the requirements of the Contract, including but not limited to by: failing to commence the work within the 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 the Contract Documents; persistently, willfully, or knowingly failing to comply with applicable laws and regulations; becoming insolvent; assigning or subcontracting any part of the work without OWNER's consent; or if in the opinion of the Board of Supervisors D-BE is not complying in good faith with the Contract; then OWNER may, by written notice to D-BE, terminate for cause D-BE's right to proceed with the work or such part of the work as to which there has been delay, breach, or other default.

15.2.2 Upon receipt of written notice from OWNER of a termination for cause, D-BE shall cease operations as directed by OWNER in the notice and take all actions necessary, or as OWNER directs, for the protection and preservation of the work.

15.2.3 After issuing a notice of termination for cause, OWNER may take over the work and prosecute the same to completion by whatever means OWNER 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.

15.2.4 If OWNER terminates for cause D-BE's right to proceed with the work, or D-BE otherwise fails to prosecute the work to completion, then the resulting damage will include but not be limited to Liquidated Damages for such reasonable period of time as may be required for completion of the work together with any costs incurred by OWNER to complete the work in excess of the unpaid Contract Price. D-BE shall not be entitled to receive any further payment under the Contract until the work is complete. If OWNER's cost of completing the work, Liquidated Damages, and other damages exceed the unpaid

balance of the Contract Price, then D-BE and D-BE's sureties shall pay the difference to OWNER within thirty days of OWNER's demand therefor.

15.2.5 Whether or not OWNER issues a written notice of termination for cause, D-BE and D-BE's sureties shall be liable for any damage to OWNER resulting from D-BE's refusal or failure to complete the work within the specified time or from D-BE's other breach or default with respect to the performance of the work.

15.2.6 D-BE's right to proceed shall not be terminated for cause nor will D-BE 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 D-BE, including but not limited to those circumstances described in the "WEATHER DAYS AND FORCE MAJEURE" Section of the General Conditions, acts of OWNER, or acts of another D-BE in the performance of a contract with OWNER.

15.2.7 The rights and remedies of OWNER provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

## **16 DISPUTES AND CLAIMS**

### **16.1 DISPUTES AND CLAIMS**

16.1.1 Continuing Performance during Dispute Resolution: In the event of a claim or dispute between D-BE and OWNER as to performance of the work, a demand for an extension of time, the interpretation/implementation of the Contract Documents, or payment or nonpayment for work performed, D-BE and OWNER shall attempt to resolve the claim or dispute. Pending resolution of the claim or dispute, D-BE shall continue the work diligently to completion as directed by OWNER. If the claim or dispute is not resolved, D-BE agrees that it will neither rescind this Contract nor stop the progress of the work.

16.1.2 Claims for \$375,000 or Less: In the event of a claim of \$375,000 or less, the Parties shall resolve the claim pursuant to Public Contract Code Sections 20104 et seq., summarized herein. A claim is defined as D-BE's demand for: (i) a time extension; (ii) payment of money or damages arising from work done by, or on behalf of, D-BE pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (iii) an amount the payment of which is disputed by OWNER.

16.1.2.1 Pursuant to Public Contract Code Section 20104.2, all claims must be in writing, must be accompanied by documents necessary to substantiate the claims, and must be filed on or before the date of final payment. The OWNER's time to respond in writing and/or request additional documentation shall be as set forth in Public Contract Code Section 20104.2.

16.1.2.2 If D-BE disputes OWNER's written response or OWNER fails to respond, D-BE may demand an informal conference. If the claim remains in dispute following the conference, D-BE may file a claim under Government Code Sections 900, et seq. The time limit for filing such claim may be tolled as provided in Public Contract Code Section 20104.2(e).

16.1.2.3 The foregoing provisions do not apply to tort claims and do not affect the time periods for filing tort claims.

16.1.2.4 In the event a civil action is filed stemming from a claim subject to Public Contract Code Sections 20104 et seq., the Court shall submit the matter to nonbinding mediation unless waived by mutual stipulation. If after mediation the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure Section 1141.11, and the arbitration shall proceed pursuant to the terms set forth in Public Contract Code Section 20104.4(b).

16.1.2.5 Attorney's fees arising from a trial de novo shall be awarded as provided by Public Contract Code Section 20104.4(b)(3).

16.1.3 Claims in Excess of \$375,000: The dispute resolution procedure set forth in Public Contract Code Sections 20104 et seq., shall not apply to resolution of claims in excess of \$375,000, which claims shall be resolved by a court of competent jurisdiction in Orange County, California, after the Project has been completed and not before.

16.1.4 Time for Submitting Claims in Excess of \$375,000 and Waiver of Untimely Claims: D-BE shall submit any claim for additional compensation in excess of \$375,000 to OWNER in writing, with documents necessary to substantiate the claim, stating the alleged facts giving rise to and the alleged basis for the claim, and when the facts giving rise to the claim became known to D-BE. Any such claim that D-BE fails to submit to OWNER within 30 days after D-BE discovers the facts giving rise to the claim shall be deemed waived. In no event shall a claim for additional compensation in excess of \$375,000 be asserted after D-BE submits an application for final payment or after there has been a cessation of the work.

## **17 OCCUPANCY**

### **17.1 PARTIAL OCCUPANCY**

17.1.1 OWNER reserves the right to enter and install equipment within each portion of the Project as it is ready to receive same, upon the condition that D-BE shall not be responsible for equipment so placed other than loss or damage caused by the acts or omissions of D-BE or those in D-BE's employ. Such partial occupancy by OWNER shall not constitute acceptance of the Project or of work not completed in accordance with the Contract Documents, nor shall it in any way relieve D-BE from correcting defective workmanship or materials in the area where OWNER has installed equipment.

17.1.2 OWNER reserves the right to take possession of or use all or part of any work prior to completion and final acceptance of all the work. If OWNER exercises this right, D-BE shall be relieved of liability for loss or damage to completed portions of the work other than loss or damage caused by the acts, omissions, or breaches of warranty by D-BE. Such taking of possession by OWNER shall not relieve D-BE from any other provisions of the Contract Documents, shall not constitute a final acceptance of any such work or of work not completed in accordance with the Contract Documents, and shall not relieve D-BE from responsibility for correcting defective workmanship or materials in the area so occupied.

17.1.3 OWNER may at any time during the performance of the work enter the work area for the purpose of performing any necessary work by OWNER labor or other D-BEs, and for any other purpose in connection with the installation of facilities. In doing so, OWNER shall endeavor not to interfere with D-BE, and D-BE shall not interfere with other work being done by or on behalf of OWNER.

## **18 ACCEPTANCE**

Unless otherwise provided in the Contract Documents, OWNER's acceptance of D-BE's work shall be accomplished by OWNER recording a Notice of Completion as promptly as practicable after completion, inspection, and testing of all work required by the Contract Documents. OWNER's acceptance of the work shall be the start date of D-BE's obligations under the "TWO-YEAR CORRECTION PERIOD" Section of the General Conditions, and of the manufacturers' and installers' warranties required by the Contract Documents. OWNER's acceptance of the work shall not be construed to limit OWNER's rights under the Contract Documents or release D-BE from any responsibility for latent defects, for correcting Defective Work, or for honoring any warranty obligations of the Contract Documents.

## **19 MISCELLANEOUS PROVISIONS**

### **19.1 ASSIGNMENT**

Neither the Contract nor any portion thereof may be assigned by D-BE unless approved in writing by OWNER. If D-BE is not a corporation with publicly traded stock, then the transfer of more than 10% of the stock held by shareholders of the corporation or a change in the composition of the board of directors of the corporation shall be deemed an assignment for purposes of this clause. Any attempted assignment contrary to the provisions of this Section shall be void.

Notwithstanding the foregoing, claims for monies due or to become due to D-BE from OWNER under the Contract may be assigned with the written consent of the Director to a surety, bank, trust company, or other financial institution and may thereafter be further assigned or reassigned to any such institution. To affect such assignments, D-BE, or D-BE's assignee, shall submit a written request to OWNER enclosing a letter from the proposed assignee indicating that it will accept such assignment.

### **19.2 ORAL MODIFICATION**

No oral statement shall in any manner modify the Contract. All changes to the Contract must be in writing.

### **19.3 NO WAIVER BY OWNER**

No failure on the part of OWNER to exercise any right or remedy under the Contract Documents shall operate as a waiver of any other right or remedy that OWNER may have. A waiver by OWNER of any breach or failure to perform under the Contract Documents shall not constitute a waiver of any subsequent breach or failure. The failure of OWNER to enforce a requirement of the Contract Documents in one or more instances shall not preclude OWNER from subsequently enforcing such requirement(s).

### **19.4 RECORDS, AUDITS, AND INSPECTION RIGHTS**

D-BE shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. D-BE's accounting and control system shall be in accordance with generally accepted accounting practices of the construction industry. D-BE shall preserve all of its books and records relating to this Contract, including but not limited to its job cost records, payables/receivables records, accounting books, bids, cancelled checks, receipts, subcontracts, purchase orders, journals, vouchers, payrolls, correspondence, drawings, daily logs, photographs, and memoranda, for a period of 4 years after final payment. Should D-BE cease to exist as a legal entity, D-BE shall forward its records pertaining to this Contract to the surviving entity in a merger or acquisition, or, in the event of liquidation, to OWNER.

OWNER, the California State Auditor, and their contracted representatives, shall have the right to examine and audit D-BE's accounting procedures and internal controls of D-BE's financial systems and to inspect and copy any books and records relating to this Contract. Such an examination, audit, and/or inspection may be requested at any time during the Project. D-BE shall cooperate fully with OWNER and the California State Auditor in the conduct of such examinations, audits, and inspections, shall grant full access at all reasonable times to its offices, the Project site, and its books and records relating to the Contract, and shall allow OWNER to interview D-BE's employees who might reasonably have information related to D-BE's books and records, provided that OWNER has given D-BE at least one working day's advance notice of OWNER's or the California State Auditor's intent to examine, audit, inspect, and interview employees. All examinations, audits, inspections, and interviews shall be conducted during normal business hours. D-BE shall include in all its subcontracts a provision giving

OWNER and the California State Auditor the same rights to examine and audit the Subcontractor's accounting procedures and internal controls of its financial systems, inspect the Subcontractor's books and records relating to the Project, and interview Subcontractor's employees as D-BE has given the OWNER and the California State Auditor in this Section.

### **19.5 PUBLIC RECORDS ACT**

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 6250 et seq., all records provided by D-BE to OWNER are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to OWNER, D-BE shall identify any records it believes are exempt from disclosure and identify the applicable CPRA exemption. If the disclosure of such records is subsequently requested, OWNER will notify D-BE of such request. Unless D-BE obtains a protective order issued by a court restricting disclosure of the requested records, OWNER may disclose the records if OWNER determines that the Public Records Act requires disclosure. D-BE shall indemnify and defend OWNER in any action to compel disclosure of such records.

### **19.6 PATENT INFRINGEMENT**

D-BE shall promptly report to OWNER any notice or claim of patent infringement arising from the performance of the Contract. D-BE shall, upon OWNER's request, furnish to OWNER any and all information in D-BE's possession relevant to such notice or claim. D-BE shall indemnify and defend OWNER from any and all claims or lawsuits on account of any alleged patent infringement arising out of the performance of the Contract, and shall pay any judgment rendered against OWNER, its officers, or its employees resulting from such claim or lawsuit.

### **19.7 ASSIGNMENT OF ANTITRUST ACTIONS**

Public Contract Code Section 7103.5 provides: "In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the D-BE and/or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the D-BE, without further acknowledgment by the parties." D-BE acknowledges and agrees to the foregoing provision and shall cause it to be included in full in its Subcontractor agreement(s) to effectuate this assignment and the requirements of Section 7103.5.

### **19.8 OWNER'S PROPERTY ON SITE**

All of OWNER's property removed or displaced pursuant to this Contract shall remain the property of OWNER unless expressly stated otherwise in the Contract Documents, and D-BE shall exercise reasonable care to prevent loss or damage to such property and shall promptly deliver it to the place designated by OWNER. In particular, all excavated clean soil is the property of OWNER and shall remain on site unless otherwise provided in the Contract Documents or otherwise directed by OWNER in writing.

### **19.9 WRITTEN NOTICE**

Any notice required under the Contract Documents to be given to OWNER by D-BE shall be in writing and personally delivered to the Senior Project Manager and Resident Engineer with a copy sent via U.S. mail, addressed as follows:

Senior Project Manager: OC Public Works  
Justin Gollhofer, P.E.  
re: MA-080-20011583 East Garden Grove Wintersburg Channel  
601 North Ross Street  
Santa Ana, California 92701

Resident Engineer: OC Public Works  
Teddy Kamarzarian, P.E., QSD  
re: MA-080-20011583 East Garden Grove Wintersburg Channel  
1152 East Fruit Street  
Santa Ana, California 92701

Notice via electronic mail is insufficient.

\*\*\*END OF GENERAL CONDITIONS\*\*\*



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# **SUPPLEMENTAL GENERAL CONDITIONS**

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***County of Orange, OC Public Works  
East Garden Grove-Wintersburg Channel***

***MA-080-20011583***

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## SUPPLEMENTAL GENERAL CONDITIONS

### 1. “DEFINITIONS”

ADD to the “DEFINITIONS” Section of the *General Conditions* the following.

D-BE may be herein referred to as CONTRACTOR.

This Contract includes the following Standard Plans, Standard Specifications and Reference Specifications which are incorporated herein by reference and made part hereof the OC Public Works Standard Plans & Specifications as though fully set forth:

1. “Standard Specifications for Public Works Construction (Greenbook), 2015 Edition,” including all subsequent supplements thereto, as written and promulgated by the Public Works Standards, Inc. and as published by BNi Building News, except Part 1 (all), Sections 214, 314 and Part 7 (all).
2. The following listed portions of the “Standard Specifications, 2015 Edition” and “Standard Plans, 2015 Edition” (and all standard specifications and plans referenced therein), as published by the State of California, Department of Transportation (Caltrans):
  - a. Standard Specification Sections: 9, 10-1.02B, 10-1.02D, 12, 19, 42, 45–60, 61–67, 70, 72, 75, 81-84, 89-91 and 95-96.
  - b. Standard Plan Numbers: A10A-A10H, A20A-A20D, A24A-A24E, A40B, A62A-A62G, A63A-A63B, A73A-A73C, A76A-A76L, A77L-A77V, A78A-A78K, A81A-A81C, A88B, A90A-A90B, D78A-D78C, D79, D79A, D80-D86C, T1-T5, T10-T17, B Sheets (all), RS Sheets (all), S82-S86, S89, S93-S95 and ES Sheets (all).
3. The “California Manual on Uniform Traffic Control Devices (CA MUTCD), 2014 Edition,” including all subsequent supplements/revisions thereto. This manual may be downloaded by accessing the following Department of Transportation, State of California, website:

<http://www.dot.ca.gov/trafficops/camutcd/camutcd2014rev1.html>

### 2. “PROTECTION”

ADD to the “PROTECTION” Subsection of the “PERFORMANCE” Section of the *General Conditions* the following.

#### 2.1. SAFETY

##### 2.1.1. WORK SITE SAFETY

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The CONTRACTOR shall provide safety measures as necessary to protect the public and workers within, or in the vicinity of, the Work site. The CONTRACT shall ensure that its operations will not create safety hazards.

The CONTRACTOR shall provide safety equipment, material, and assistance to OWNER personnel so that they may properly inspect all phases of the Work.

When asbestos is being removed, the requirements of the CCR Title 8, Div. 1, Chapter 4, Subchapter 4 and Subchapter 7 shall be implemented.

The Contractor shall designate in writing a "Project Safety Official" who shall be at the Work site at all times, and who shall be thoroughly familiar with the CONTRACTOR's Injury and Illness Prevention Program (IIPP) and Code of Safe Practices. The Project Safety Official shall be available at all times to abate any potential safety hazards and shall have the authority and responsibility to shut down an unsafe operation, if necessary.

**2.1.2. SAFETY ORDERS**

The CONTRACTOR shall have at the Work site, copies or suitable extracts of Construction Safety Orders, Tunnel Safety Orders, and General Industry Safety Orders issued by the State Division of Industrial Safety.

Prior to beginning any excavation 5 feet in depth or greater, the CONTRACTOR shall submit to the ENGINEER, the name of the "Competent Person" as defined in CCR, Title 8, Section 1504, in accordance with 2-5.3. The "Competent Person" shall be present at the Work site as required by Cal-OSHA.

Before excavating any trench 5 feet or more in depth, the CONTRACTOR shall submit in accordance with 2-5.3 a detailed Working Drawing (shoring plan) showing the design of the shoring, bracing, sloping, or other provisions used for the workers; protection. If the shoring plan varies from the shoring system standards, the shoring plan shall be prepared by a registered Structural or Civil Engineer. The shoring plan shall accommodate existing underground utilities. No excavation shall start until the ENGINEER has accepted the shoring plan and the CONTRACTOR has obtained a permit from the State Division of Industrial Safety. A copy of this permit shall be submitted to the Engineer in accordance with 2-5.3. If the CONTRACTOR fails to submit a shoring plan or fails to comply with an accepted shoring plan, the CONTRACTOR shall suspend work at the affected location(s). Such suspended work shall not be the basis of a claim for Extra Work and the CONTRACTOR shall not receive additional compensation or Contract time.

Payment for shoring shall be included in the Bid item provided therefore. Payment for compliance with the provisions of the safety orders and all other laws, ordinances, and regulations shall be included in the various Bid items.

**2.1.3. USE OF EXPLOSIVES**

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Explosives may be used only when authorized in writing by the ENGINEER, or as otherwise specified in the Special Provisions.

Explosives shall be handled, used, and stored in accordance with all applicable regulations. Prior to blasting, the CONTRACTOR shall comply with the following requirements:

- a) The jurisdictional law enforcement agency shall be notified 24 hours in advance of blasting.
- b) The jurisdictional fire department shall be notified 24 hours in advance of blasting.
- c) Blasting activities and schedule milestones shall be included in the CONTRACTOR's construction schedule.

For a Private Contract, specific permission shall be obtained from the OWNER in writing, prior to any blasting operations in addition to the above requirements.

The ENGINEER's approval of the use of explosives shall not relieve the CONTRACTOR from liability for claims caused by blasting operations.

#### 2.1.4. HAZARDOUS SUBSTANCES

An SDS as described in CCR, Title 8, Section 5194, shall be maintained at the Work site for all hazardous material used by the CONTRACTOR.

Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer warnings and application instructions listed on the MSDS and on the product container label.

The CONTRACTOR shall notify the ENGINEER if a specified product cannot be used under safe conditions.

#### 2.1.5. CONFINED SPACES

The CONTRACTOR shall be responsible for implementing, administering and maintaining a Confined Space Entry Program (CSEP) in accordance with CCR, Title 8, Sections 5156, 5157 and 5158.

Prior to the start of the Work, the CONTRACTOR shall prepare and submit a CSEP in accordance with the "CONTRACTOR's SUBMITTALS" Subsection of the *General Conditions*. The CSEP shall address all potential physical and environmental hazards and contain procedures for safe entry into confined spaces such as the following:

- a) Training of personnel.
- b) Purging and cleaning the space of materials and residue.
- c) Potential isolation and control of energy and material inflow.
- d) Controlled access to the space.
- e) Atmospheric testing of the space.
- f) Ventilation of the space.

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- g) Special hazards consideration.
- h) Personal protective equipment.
- i) Rescue plan provisions.

The submittal shall include the names of the CONTRACTOR'S personnel, including each Subcontractor's personnel, assigned to the Work that will have CSEP responsibilities, their CSEP training, and their specific assignment and responsibility in carrying out the CSEP.

Entry into permit-required confined spaces as defined in CCR, Title 8, Section 5157 may be required as a part of the Work. Manholes, tanks, vaults, pipelines, excavations, or other enclosed or partially enclosed spaces shall be considered permit-required confined spaces until the pre-entry procedures demonstrate otherwise. The CONTRACTOR shall implement a permit-required CSEP prior to performing any work in a permit-required confined space. A copy of the permit shall be available at all times for review by the CONTRACTOR and the ENGINEER at the Work site.

Payment for the CSEP shall be included in the Bid items for which the CSEP is required.

#### 2.1.6. SECURITY & PROTECTIVE DEVICES

Security and protective devices shall consist of fencing, steel plates, or other devices as specified in the Special Provisions to protect open excavations.

The CONTRACTOR shall completely fence open excavations. Security fencing shall conform to 304-3.5. Security fencing shall remain in place unless workers are present and construction operations are in progress during which time the CONTRACTOR shall provide equivalent security.

The CONTRACTOR shall provide steel plate covers as necessary to protect from accidental entry into openings, trenches, and excavations.

### 3. "FUGITIVE DUST EMISSION CONTROL"

DELETE the "FUGITIVE DUST EMISSION CONTROL" Subsection of "PERFORMANCE" Section of the *General Conditions* in its entirety. Refer to the "DUST CONTROL" Section of the *Special Provisions: Construction* for additional details and requirements.

### 4. "REGULATORY COMPLIANCE REQUIREMENTS"

DELETE the "REGULATORY COMPLIANCE REQUIREMENTS" Subsection of the "PERFORMANCE" Section of the *General Conditions* in its entirety. REPLACE with the "REGULATORY COMPLIANCE & PERMIT REQUIREMENTS" Section below.

## 5. REGULATORY COMPLIANCE & PERMIT REQUIREMENTS

### 5.1. GENERAL PERMITS, LICENSES AND AGREEMENTS

The CONTRACTOR shall be responsible for identifying and obtaining all permits and licenses required for this project. Cost and fees associated with said permits regardless of whether obtained by the OWNER, City or by CONTRACTOR, shall be borne solely by the CONTRACTOR.

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

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

**5.2. CONSTRUCTION RELATED DEWATERING & DE MINIMUS DISCHARGES (SANTA ANA REGION)**

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

A copy of the OWNER'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](http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_030_oc_stormwater_ms4_permit.pdf)

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

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 OWNER's Municipal NPDES Permit (Order No. R8-2009-0030) and to consult the General DeMinimus Permit (Order No. R8-2009-0003) for the types of de minimus discharges which are covered.

**5.3. NPDES MS4 PERMIT REQUIREMENTS**

The OWNER is subject to two Municipal National Pollutant Discharge Elimination System (NPDES) Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). The MS4 Permits, reissued by the Santa Ana and San Diego Regional Water Quality Control Boards in 2009, are now in their fourth terms. They both require the OWNER to prepare and update a Stormwater Program Local Implementation Plan (LIP) which details how compliance with requirements of the MS4 Permits will be maintained.



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

<http://ocwatersheds.com/documents/damp/lip>

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

#### **5.4. NPDES CONSTRUCTION GENERAL PERMIT (CGP) REQUIREMENTS**

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 (construction sites where calculated soil disturbance totals 1 acre or more) are required to obtain coverage and comply with this Construction General Permit (CGP).

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

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml)

The CONTRACTOR is hereby directed to read and understand all the requirements of this Permit as they relate to this PROJECT.

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

Prior to commencing work, the CONTRACTOR shall submit the required PRDs (Permit Registration Documents) to the ENGINEER. 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 ENGINEER will electronically submit these documents through the Stormwater Multi-Application, Reporting and Tracking System (SMARTS) to the State Water Resources Control Board (SWRCB) to obtain coverage under the CGP.

##### **5.4.1. REPORTING**

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

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CONTRACTOR shall refer to the “REGULATORY COMPLIANCE REQUIREMENTS” Subsection of the *General Conditions*, the “REGULATORY COMPLIANCE & PERMIT REQUIREMENTS” Section of the *Supplemental General Conditions*, and the “STORM WATER POLLUTION PREVENTION PLAN (SWPPP)” Section of the *Special Provisions: Construction* for all SWPPP requirements.

**5.5. SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD  
(SECTION 401 CERTIFICATION)**

The OWNER has obtained a water quality certification, under Section 401 of the Federal Clean Water Act, from the Regional Water Quality Control Board, dated March 13, 2019. The CONTRACTOR is hereby directed to read the water quality certification, as reproduced herein, and comply with the conditions and requirements in the certification.

**5.6. U.S. ARMY CORPS OF ENGINEERS (SECTION 404 PERMIT)**

The OWNER has obtained a Standard Individual Permit, under Section 404 of the Federal Clean Water Act (CWA), from the Los Angeles District of the U.S. Army Corps of Engineers (USACE), dated September 28, 2018. The CONTRACTOR is directed to read the permit, as reproduced herein, and comply with the conditions and requirements as set forth in the permit.

**5.7. CALIFORNIA DEPARTMENT OF FISH & WILDLIFE (SECTION 1602  
AGREEMENT)**

The OWNER has entered into a Section 1602 Agreement, under the California Fish and Game Code, with the California Department of Fish and Wildlife (CDFW), dated June 12, 2018. The CONTRACTOR is hereby directed to read the 1602 Agreement, as reproduced herein, and comply with the conditions and requirements in the Agreement. A copy of the Agreement must be kept on the jobsite at all times and made available to any Department representative at their request.

**5.8. PROPERTY, ENCROACHMENT AND OTHER PERMITS/APPROVALS**

The CONTRACTOR shall comply with the requirements of the Permits listed under the “Permits Requirements” Section of the *Special Provisions*.

**5.9. PAYMENT**

All compensation for complying with the conditions and requirements of the various permits for the PROJECT shall be as specified in the:

1. “REGULATORY COMPLIANCE REQUIREMENTS” Subsection of the *General Conditions*;
2. “REGULATORY COMPLIANCE & PERMIT REQUIREMENTS” Section of the *Supplemental General Conditions*;
3. “REGULATORY COMPLIANCE & PERMIT REQUIREMENTS” Section of the *Special Provisions: Construction*;
4. “STORM WATER POLLUTION PREVENT PLAN (SWPPP)” Section of the *Special Provisions: Construction*; and

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and no additional compensation will be allowed therefore.

## **6. COOPERATION**

When necessary, the CONTRACTOR shall so conduct its operations as to permit access to the Work site and provide time for utility work to be accomplished during the progress of the Work.

The CONTRACTOR shall cooperate with all private property owners affected by the PROJECT, notifying them at least 24 hours before commencement of any work on/or adjacent to their property.

The CONTRACTOR shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, and essential work by others. The OWNER, its workers and contractors and others, shall have the right to operate within or adjacent to the Work site during the performance of such work.

The OWNER, the CONTRACTOR and each of such workers, contractors and others, shall coordinate their operations and cooperate to minimize interference.

Should the CONTRACTOR be delayed by the OWNER, and such delay could not have been reasonably foreseen or prevented by the CONTRACTOR, the ENGINEER will determine the extent of the delay, the effect on the Work, and any extension of time.

The CONTRACTOR shall include in its GMP all costs involved as a result of coordinating its work with others. The CONTRACTOR will not be entitled to additional compensation from the OWNER for damages resulting from such simultaneous, collateral, and essential work. If necessary to avoid or minimize such damage or delay, the CONTRACTOR shall redeploy its work force to other parts of the Work. Full compensation for conforming to these added requirements shall be considered as included in the various items of work involved and no additional compensation will be allowed therefor.

## **7. 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 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.

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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. 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.

## **8. SOUND CONTROL REQUIREMENTS**

The 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.

## **9. WATER CONSERVATION**

The 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 ENGINEER.

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Nothing in this Subsection 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.

## **10. FLOW AND ACCEPTANCE OF WATER**

It is anticipated that storm, tidal, well and pump discharge, surface and possible ground or other waters (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.

In addition, by entering into this CONTRACT, the CONTRACTOR, his subcontractors, and material suppliers acknowledge that there are inherent risks to their workmen, equipment, materials, supplies, and other personal property by conducting work in and around OWNER facilities from WATERS; that damages and injuries to his workmen, completed and partially completed PROJECT works, construction site water quality features/BMPs, equipment, materials, supplies, and other property could occur at any given time, especially if occupying the PROJECT site or conducting work during the storm season (October 1st to April 30th); and that OWNER is not responsible or liable for the CONTRACTOR's, subcontractor's, and/or material supplier's damages caused by WATERS.

The CONTRACTOR by submitting a bid assumes all of said risk, responsibility, and liability at no additional cost to the OWNER. The CONTRACTOR shall repair/rebuild/replace any damages or losses to PROJECT (while CONTRACTOR is in possession of PROJECT) at no additional cost to the OWNER beyond his original bid (and all extra work approved prior to the time of damage by WATERS). The CONTRACTOR acknowledges that he considered and included these issues and risks in his submitted bid for the PROJECT.

The CONTRACTOR shall conduct its operations in such a manner WATERS may proceed without diversion or obstruction along existing street and drainage courses. Equipment, materials, and supplies shall not be placed or stockpiled in any way that they may create an obstruction to WATERS. Drainage of WATERS from existing or proposed storm drains and catch basins shall be maintained at all times. Diversion of WATERS 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 ENGINEER, are not subject to the probability of damage. CONTRACTOR shall at no cost to OWNER obtain written permission from the appropriate public agency or property owner before any diversion of WATERS will be permitted by the ENGINEER.

By entering into an CONTRACT with the OWNER, the CONTRACTOR acknowledges that the ENGINEER's permission and/or approval shall in no way relieve the CONTRACTOR from his responsibility and/or liability, for protecting at all times, adjacent and downstream properties, including the PROJECT site, from damages due to temporary: stream bank/channel alterations; excavation and/or fill; channelization; flow diversions; check dams, sediment, groundwater, water

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quality basins, and/or other impoundments not shown on the Plans but chosen and implemented by the CONTRACTOR, at his option, as his means and methods of constructing the PROJECT.

During the course of controlling WATERS, the CONTRACTOR shall conduct construction operations to protect WATERS from being polluted with concrete, grout, mortar or concrete washout, chemicals, sediment, fuels, oils, bitumens and other asphalt derivatives, 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 sediment, 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: sediment, vehicle/equipment fuels, oils, lubricants, and hydraulic, radiator or battery fluids; vehicle/equipment wash water and concrete mix wash water; concrete, detergent or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; solid or liquid chemical spills; wastes from sealants, limes, and solvents; and superchlorinated potable water line flushings.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site, physically separated from potential storm water run-off, with ultimate disposal in accordance with local, state, and federal requirements.

## 11. SURVEYING SERVICES

CONTRACTOR shall be made aware that OWNER has a work schedule with limited surveying services available on Friday, and that surveying services cannot be guaranteed on all Fridays. CONTRACTOR is required to keep OWNER informed in advance of his schedule to assure surveying services are available for construction of Project as described in the "SURVEYING" Subsection of the "PERFORMANCE" Section of the *General Conditions*. CONTRACTOR shall submit a formal written request for surveying services to OWNER no less than forty eight (48) hours in advance of his need for such services. Failure by CONTRACTOR to submit a written request in a timely manner may not guarantee that such services will be available when required, and surveying services cannot be guaranteed on Friday regardless.

The CONTRACTOR is to make every effort to avoid disturbing or destroying Survey Control Points set by the County of Orange Survey Crews (OC Survey). If destruction of a Control Point is unavoidable, CONTRACTOR is required to contact the OWNER at least 48 hours in advance. This will enable OC Survey crews to assess the relevance of said Control Point and

1. Allow its destruction; or
2. Allow OC Survey time to relocate said Control Point and not affect the project schedule.

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If this procedure is not followed, the cost for replacing or relocating or re-setting of dislocated Survey Control Points as specified in these *General Provisions* and as deemed necessary by the OWNER or OWNER Surveyor. Is considered included in various items of work involved and no additional compensation will be allowed therefor.

CONTRACTOR's attention is directed to Section 8771 (b) of the Business and Professions Code and submittal of appropriate documents (Corner Record or Record of Survey) with the County Surveyor's office for review and approval.

## **12. AFFIRMATIVE ACTION FOR HANDICAP WORKERS**

CONTRACTOR shall abide by the following clause and shall include same in all contracts with subcontractors:

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The recipient or CONTRACTOR agrees to take Affirmative Action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination, based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, demotion, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

## **13. CULTURAL/SCIENTIFIC RESOURCE FINDS**

There are no known cultural/scientific resources at the site. 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 ENGINEER 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 ENGINEER.

Should the findings, or notification as to disposition of findings, result in delays or extra work, additional time and/or extra work payment will be allowed as provided for in the "CHANGES" Section of the *General Provisions*.

Any findings of a cultural/scientific resource nature shall remain the property of the OWNER and not become the property of the person or persons making the discovery.

## **14. HOLIDAYS**

Attention for definition of "working day" is directed to the "DEFINITIONS" Section of the *General Conditions*.

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## 15. UNFORESEEN DIFFICULTIES

The CONTRACTOR shall promptly notify the ENGINEER of any work site conditions per the "CHANGED CONDITIONS" Subsection of the "CONDITIONS AFFECTING THE WORK" Section of the *General Conditions*, in writing, upon their discovery and identification, and before they are disturbed. All loss or damage arising out of the nature of the work to be accomplished under the CONTRACT, or from any unforeseen obstructions or difficulties which may be encountered during the progress of the work and in the prosecution of the same, or from the action of elements, or from encumbrances on the line of work, shall be sustained by the CONTRACTOR for failure to notify the ENGINEER per the "CHANGED CONDITIONS" Subsection of the "CONDITIONS AFFECTING THE WORK" Section of the *General Conditions* and these Special Provisions.

## 16. PROVISIONS FOR EMERGENCIES

Unusual conditions may arise during the work which requires that immediate and unusual provisions be made to protect the public from danger, loss or prosecution of the work. It is part of the service required of the CONTRACTOR to make such provisions and to furnish such protection.

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

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

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

\*\*\*END OF SUPPLEMENTAL GENERAL CONDITIONS\*\*\*